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Presidential Documents

Title 3—

The President

Proclamation 8246 of April 25, 2008

Malaria Awareness Day, 2008

By the President of the United States of America

A Proclamation

On Malaria Awareness Day, our Nation recognizes all who suffer from this devastating disease, and we remember the lives lost to an illness that is entirely preventable and treatable. Today, we renew our commitment to lead the world toward the urgent goal and noble mission of turning the tide against malaria in Africa and around the world.

My Administration and our partners are working together to save lives in Africa through the President's Malaria Initiative. On a recent trip to Africa, First Lady Laura Bush and I personally saw this Initiative working and making incredible progress against malaria. By distributing insecticide-treated bed nets, expanding indoor insecticide spraying, providing cutting-edge drugs to those in need, and empowering African leaders to determine the best strategy for their country, we have brought an extraordinary achievement within reach: together, we can eradicate a disease that has claimed the lives of children for centuries. Millions of lives are being saved because of the kindness and generosity of the American people, and we will continue to work to ensure that our aggressive and comprehensive strategy achieves its goal.

America is a compassionate country that feeds the hungry and protects the vulnerable because we believe every human life has inherent dignity and matchless value. As the people of Africa continue their struggle against malaria, we offer our support and steadfast commitment. We call on all nations to join us in a great humanitarian effort.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 25, 2008, as Malaria Awareness Day. I encourage Americans to answer the universal call to love a neighbor and join in our goal of eliminating malaria on the African continent and elsewhere.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth 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.

[FR Doc. 08–1199
Filed 4–28–08; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN 0560–AH79

Tobacco Transition Payment Program; Release of Records

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is revising the Tobacco Transition Payment Program (TTPP) regulations to expand the information provided in quarterly notices to tobacco manufacturers and importers about the assessments due to CCC. Assessments are based on market shares, CCC has concluded that certain information formerly not included may be included in future assessment notices and released. Specifically, CCC will release to reporting manufacturers and importers the qualifying market share of other manufacturers and importers, for the relevant class of tobacco product, based solely on information supplied by the reporting manufacturer or importer to CCC.

DATES: *Effective Date:* April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Jane Reed, Agricultural Economist, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0515, 1400 Independence Ave., SW., Washington, DC 20250–0510. Phone: (202) 720–6782; fax: (202) 720–8120; e-mail: *Jane.Reed@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background and Discussion

TTPP was established by Title VI, the ''Fair and Equitable Tobacco Reform Act'' (FETRA) of the American Jobs Creation Act of 2004 (Pub. L. 108–357). FETRA repealed the tobacco marketing quota and related price support programs authorized by both Title III of the Agricultural Adjustment Act of 1938 and by the Agricultural Act of 1949 and provided for payments to persons who, during a certain period or at a certain time, had been the owners of farms with tobacco quotas or had produced regulated tobacco. FETRA is funded using assessments collected from tobacco manufacturers and importers.

Under FETRA, CCC sends out quarterly notices to tobacco manufacturers and importers, informing those entities of the assessments due to CCC. Each notice also provides the entity with certain information, described at 7 CFR 1463.8. Assessments within classes of products are based on market shares, as calculated pursuant to FETRA. Prior to the issuance of this final rule, CCC had not included in its assessment notices data concerning the market share of each other manufacturer or importer for each applicable class of tobacco product even though such information is referenced in section 625 of FETRA, 7 U.S.C. 518d, specifically in section 625(d)(2)(G) of FETRA. This was because market share calculations are based on the filing by reporting parties of copies of certain tax returns filed with the U.S. Department of the Treasury (Treasury) and the Department of Homeland Security (DHS). Previously, in the preamble to a final rule published in the **Federal Register** on February 10, 2005 (70 FR 7007–7014), CCC explained that, after consultation with Treasury it had determined that market share data would not be included in the assessment notices because of the confidentiality provision of 26 U.S.C. 6103 regarding tax return information filed with Treasury. However, after further consultation, it has been determined that market share data may be included in the quarterly assessments without objection under section 6103 so long as the market share information supplied is limited to information supplied to CCC by those tobacco manufacturers and importers reporting to CCC. Accordingly, the TTPP regulations are changed in this final rule. Because of administrative changes that are needed, CCC does not expect routine inclusion of this data in quarterly assessment notices before the September 2008 assessments.

Miscellaneous Correction

In addition to the change discussed above, CCC is correcting the CCC point of contact information in the definition section (7 CFR 1463.3).

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 642(b) of FETRA, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 5 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

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

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The following final rule was determined to be Categorically Excluded. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the

Federal Register on June 24, 1983 (48 FR 29115).

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988. This final rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Federal Assistance Program

The title and number of the Federal assistance program as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are: Commodity Loans and Purchases—10.051.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act (UMRA) for State, local, and tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 642(c) of FETRA requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective on the date of publication in the **Federal Register**.

Paperwork Reduction Act

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 642(b) of FETRA, which provides that these regulations, which are necessary to implement FETRA, be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC 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.

List of Subjects in 7 CFR Part 1463

Agriculture, Agricultural commodities, Acreage allotments, Marketing quotas, Price support programs, Tobacco, Tobacco Transition Program.

■ For the reasons provided above, amend part 1463 of title 7 of the Code of Federal Regulation as follows:

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

■ 1. The authority citation for part 1463 continues to read as follows:

Authority: 7 U.S.C. 714b and 714c; and Title VI of Pub. L. 108–357.

■ 2. Amend § 1463.3 by revising the definition of *CCC's point of contact* to read as follows:

§ 1463.3 Definitions.

* * * * *

CCC's point of contact means, for items physically sent to CCC, ''Fibers, Peanuts, and Tobacco Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0515, Room 3720–S, 1400 Independence Avenue, SW., Washington, DC 20250–0515'' unless otherwise specified by CCC through actual notice.

* * * * *

■ 3. Amend § 1463.8 by redesignating paragraphs (b)(8) and (b)(9) as paragraphs (b)(9) and (b)(10), respectively, and adding a new paragraph (b)(8) to read as follows:

§ 1463.8 Notification of assessments.

* * * * *

(b) * * *

(8) Beginning with the 2nd quarter of 2008, or as soon as practicable thereafter, the applied market share for that quarter of each other manufacturer and importer, for the applicable class of tobacco product of those manufacturers and importers that have provided such information to CCC in accordance with the provisions of § 1463.6, as determined by the Deputy Administrator, Farm Service Agency.

* * * * *

Signed at Washington, DC, April 23, 2008.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–9295 Filed 4–28–08; 8:45 am]

BILLING CODE 3410–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Halocarbon Laboratories, Division of Halocarbon Products Corp., to Halocarbon Products Corp.

DATES: This rule is effective April 29, 2008.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661, has informed FDA that it has changed its name to Halocarbon Products Corp. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect these changes. FDA is also correcting the sponsor's address in the regulation.

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

List of Subjects in 21 CFR Part 510

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

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

■ 2. In § 510.600 in the table in paragraph (c)(1), revise the entry for ''Halocarbon Laboratories''; and in the table in paragraph (c)(2), revise the entry for ''012164'' to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Halocarbon Products Corp., 887 Kinderkamack Rd., River Edge, NJ 07661.	012164
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* *	* * * *
012164	Halocarbon Products Corp., 887 Kinderkamack Rd., River Edge, NJ 07661.
* *	* * * *

Dated: April 16, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–9328 Filed 4–28–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 40 and 41

[Public Notice: 6202]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of State's regulations related to application for a nonimmigrant visa, to offer a completely electronic application procedure as an alternative to submission of the Form DS–156.

DATES: This rule is effective on April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1202, e-mail (*robertsonce3@state.gov*).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

The Government Paperwork Elimination Act (GPEA 1998) requires that, when possible, Federal agencies use electronic forms, electronic filing, and electronic signatures to conduct agency business with the public. For this reason, the Department of State developed and introduced an electronic application process for nonimmigrant visas to eventually replace the current application process, which depends on a paper form (Form DS–156, and other forms when required, such as the Form DS–157 and Form DS–158). The first step was to offer an electronic visa application form (EVAF) as a voluntary alternative way of obtaining and preparing the Form DS–156. While the nonimmigrant visa applicant could obtain and prepare the Form DS–156 electronically, he or she was required to sign the Form DS–156 manually. On October 1, 2006, the EVAF was made mandatory worldwide wherever possible. Now, while the Department will continue to accept the EVAF (electronic Form DS–156) where necessary, it proposes to eventually eliminate the Form DS–156 entirely and replace it with the Form DS–160, an electronic form designed to be completed and signed electronically.

What effect does the electronic application process have on the nonimmigrant visa applicant?

The procedure is the same for the nonimmigrant visa applicant except that he or she will not be required to print and sign a form to take to the visa interview. All information entered into the Form DS–160 will be available to the consular officer at the time of the interview, thus simplifying the process from the point of the view of the applicant. The applicant is required to sign the Form DS–160 electronically.

How does the applicant sign the Form DS–160 electronically?

The applicant will be required to click on the box designated ''Sign Application'' found within the certification section of the application.

How does the consular officer identify the applicant who has submitted an electronic application (Form DS–160)?

Photos, passports and fingerscans collected as part of the application process will identify the applicant.

How does the applicant certify that the information in the Form DS–160 is correct?

By signing the Form DS–160 electronically (i.e., clicking on the ''Sign Application'' box), the applicant certifies that the information provided is correct.

Is an electronic signature binding on a nonimmigrant visa applicant?

Yes. The electronic signature (i.e., the click on the ''Sign Application'' box) indicates that the applicant is familiar with and intends to be bound by the statements contained in the application and has answered all questions truthfully, under penalty of perjury.

Can a third party prepare the Form DS–160?

While a third party may assist the applicant in preparing the Form DS–160, the applicant must electronically sign the application himself or herself. The applicant must identify in the application any third party who has assisted in the preparation of the Form DS–160.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulates individual aliens who seek consideration for nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by

State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule 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 Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Parts 40 and 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and Visas.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR part 40 and 41 as follows:

PART 40—[AMENDED]

■ 1. The authority citation for part 40 continues to read:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801, Pub. L. 104–208, 110 Stat. 3546.

■ 2. Section 40.1 is amended by revising paragraph (l)(1) to read as follows:

§ 40.1 Definitions.

* * * * *

(l) * * *

(1) For a nonimmigrant visa applicant, submitting for formal adjudication by a consular officer of an electronic application, Form DS–160, signed electronically by clicking the box designated ''Sign Application'' in the certification section of the application or, as directed by a consular officer, a completed Form DS–156, with any required supporting documents and biometric data, as well as the requisite processing fee or evidence of the prior payment of the processing fee when such documents are received and accepted for adjudication by the consular officer.

* * * * *

PART 41—[AMENDED]

■ 3. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681–795 through 2681–801, Pub. L. 104–208, 110 Stat. 3546.3.

■ 4. Section 41.32 is amended by revising paragraph (a)(2) to read as follows:

§ 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B–1/B–2 visitor visas.

(a) * * *

(2) *Procedure for application.* Mexican applicants shall apply for a B–1/B–2 Visa/BCC at any U.S. consular office in Mexico designated by the Deputy Assistant Secretary of State for Visa Services pursuant to paragraph (a) of this section to accept such applications. The application shall be submitted electronically on Form DS–160 or, as directed by a consular officer, on Form DS–156. If submitted electronically, it must be signed electronically by clicking the box designated ''Sign Application'' in the certification section of the application.

* * * * *

■ 5. Section 41.103 is revised to read as follows:

§ 41.103 Filing an application.

(a) *Filing an application—(1) Filing of application required.* Every alien seeking a nonimmigrant visa must make an electronic application on Form DS–160 or, as directed by a consular officer, an application on Form DS–156. The Form DS–160 must be signed electronically by clicking the box designated ''Sign Application'' in the certification section of the application.

(2) *Filing of an electronic application (Form DS–160) or Form DS–156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(3) *Waiver of filing of application when personal appearance is waived.* Even if personal appearance of a visa applicant is waived pursuant to 22 CFR 41.102, the requirement for filing an application is not waived.

(b) *Application—(1) Preparation of Electronic Nonimmigrant Visa Application (Form DS–160) or, alternatively, Form DS–156.* The consular officer shall ensure that the application is fully and properly completed in accordance with the applicable regulations and instructions.

(2) *Additional requirements and information as part of application.* Applicants who are required to appear for a personal interview must provide a biometric, which will serve to authenticate identity and additionally verify the accuracy and truthfulness of the statements in the application at the time of interview. The consular officer may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in the application is inadequate to permit a determination of the alien's eligibility to receive a nonimmigrant visa. Additional statements made by the alien become a part of the visa application. All documents required by the consular

officer under the authority of § 41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

(3) *Signature.* The Form DS–160 shall be signed electronically by clicking the box designated ''Sign Application'' in the certification section of the application. This electronic signature attests to the applicant's familiarity with and intent to be bound by all statements in the NIV application under penalty of perjury. Alternatively, except as provided in paragraph (a)(2) of this section, the Form DS–156 shall be signed by the applicant, with intent to be bound by all statement in the NIV application under penalty of perjury.

(4) *Registration.* The Form DS–160 or the Form DS–156, when duly executed, constitutes the alien's registration for the purposes of INA 221(b).

■ 6. Section 41.106 is revised to read as follows:

§ 41.106 Processing.

Consular officers must ensure that the Form DS–160 or, alternatively, Form DS–156 is properly and promptly processed in accordance with the applicable regulations and instructions.

■ 7. Section 41.113 is amended by revising paragraphs (g) and (h) to read as follows:

§ 41.113 Procedures in issuing visas.

* * * * *

(g) *Delivery of visa.* In issuing a nonimmigrant visa, the consular officer should deliver the visaed passport, or the prescribed Form DS–232, which bears the visa, to the alien or to the alien's authorized representative. Any evidence furnished by the alien in accordance with 41.103(b) should be retained in the consular files, along with Form DS–156, if received.

(h) *Disposition of supporting documents.* Original supporting documents furnished by the alien should be returned for presentation, if necessary, to the immigration authorities at the port of entry. Duplicate copies may be retained in the consular files or scanned into the consular system.

* * * * *

Dated: April 22, 2008.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Acting, Department of State.

[FR Doc. E8–9336 Filed 4–28–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9390]

RIN 1545–BE37

Standards for Recognition of Tax-Exempt Status if Private Benefit Exists or if an Applicable Tax-Exempt Organization Has Engaged in Excess Benefit Transaction(s); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9390) that were published in the **Federal Register** on Friday, March 28, 2008 (73 FR 16519) clarifying the substantive requirements for tax exemption under section 501(c)(3) of the Internal Revenue Code. These final regulations also contain provisions that clarify the relationship between the substantive requirements for tax exemption under section 501(c)(3) and the imposition of section 4958 excise taxes on excess benefit transactions.

DATES: This correction is effective April 29, 2008 and is applicable on March 28, 2008.

FOR FURTHER INFORMATION CONTACT: Galina Kolomietz, (202) 622–7971 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 501(c)(3) and 4958 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9390) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.501(c)(3)–1 [Amended]

■ **Par. 2.** Section 1.501(c)(3)–1 is amended as follows:

■ 1. In paragraph (d)(1)(iii) *Example 2.* (ii), in the second sentence, the language ''As a result, the sole activity of O serves the private interests of these artists.'' is removed and the language ''As a result, the principal activity of O serves the private interests of these artists.'' is added in its place.

■ 2. In paragraph (f)(2)(iv) *Example 2.* (iii), in the sixth sentence, the language ''Beginning in Year 4, however, as O's exempt function activities grow, the size and scope of the excess benefit transactions that occurred in Year 3 become less and less significant as compared to the size and extent of O's regular and ongoing exempt function activities.'' is removed and the language ''Beginning in Year 4, however, as O's exempt function activities grow, the size and scope of the excess benefit transactions that occurred in Year 3 become less and less significant as compared to the size and scope of O's regular and ongoing exempt function activities.'' is added in its place.

■ 3. In paragraph (f)(2)(iv) *Example 4.* (iii), in the fourth sentence, the language ''By adopting a conflicts of interest policy and significant new contract review procedures and by terminating C, O has implemented safeguards that are reasonably calculated to prevent future violations.'' is removed and the language ''By adopting a conflicts of interest policy and new contract review procedures and by terminating C, O has implemented safeguards that are reasonably calculated to prevent future violations.'' is added in its place.

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–9362 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9394]

RIN 1545–BD80

Special Rules To Reduce Section 1446 Withholding

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. The regulations will affect partnerships engaged in a trade or business in the United States that have one or more foreign partners. The final regulations also include conforming amendments to §§ 1.1446–3 and 1.1446–5 and to regulations under sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722.

DATES: *Effective Date:* These regulations are effective on April 29, 2008.

Applicability Dates: The regulations are generally applicable for partnership taxable years beginning after December 31, 2007. See § 1.1446–6(f). For a transition rule see § 1.1446–6(g).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1934. The collection of information in these final regulations is in § 1.1446–6(c) and (d). This information is required to determine the extent to which a partnership will consider certifications of losses and deductions in calculating the amount of withholding tax it must pay with respect to a foreign partner on the partner's allocable share of effectively connected taxable income earned by such partnership.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 3, 2003, the IRS and the Treasury Department published in the **Federal Register** a notice of proposed rulemaking [REG–108524–00; 2003–42 IRB 869; 68 FR 52466], corrected at 68 FR 62553 (November 5, 2003) under sections 871, 1443, 1446, 1461, 1462, 1463, 6109, and 6721 of the Internal Revenue Code (Code). The regulations provide guidance for partnerships required to pay withholding tax under section 1446 of the Code (1446 tax). On May 18, 2005, the IRS and the Treasury Department issued final and temporary regulations under section 1446. The 2005 final regulations set forth the provisions of the 2003 proposed regulations in final form and the temporary regulations established a new procedure by which a partnership could consider certain partner-level deductions and losses when computing its 1446 tax. The temporary regulations generally apply to partnership taxable years beginning after the date of their issuance, but an election was provided that permitted a partnership to apply the regulations to partnership taxable years beginning after December 31, 2004, provided the partnership elected to apply the 2005 final regulations to partnership taxable years beginning after December 31, 2004. On May 18, 2005, the IRS and the Treasury Department also published in the **Federal Register** a notice of proposed rulemaking [REG–108524–00; 2005–1CB 1158; 70 FR 28701], under sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722 of the Code to implement the section 1446 regime, as well as cross-referencing the temporary regulations under § 1.1446–6T (see 26 CFR Part 1, revised as of April 1, 2007). Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on November 16, 2005. After consideration of all the comments, the proposed regulations are adopted, as revised by this Treasury decision and the temporary regulations are removed.

Explanation of Provisions

Section 1446 requires a partnership to pay section 1446 tax on a foreign partner's allocable share of effectively connected taxable income (ECTI) from the partnership. The temporary regulations allow certain foreign partners to certify certain deductions and losses to a partnership to reduce the 1446 tax required to be paid by the partnership with respect to ECTI allocable to such partners. The temporary regulations also permit a nonresident alien partner to certify to the partnership that the partnership investment is (and will be) its only activity for its taxable year that gives rise to effectively connected income, gain, deduction, or loss. In that case, the partnership is not required to pay 1446 tax (or any installment of such tax) with respect to such partner if the partnership estimates that the annualized (or, in the case of a partnership completing its Form 8804 ''Annual Return for Partnership Withholding Tax (Section 1446),'' the actual) 1446 tax due with respect to such nonresident alien partner is less than $1,000.

I. Modifications to the Temporary Regulations

A. Format of Certificate Submitted to a Partnership

The temporary regulations state that no particular form is required for the partner's certificate of deduction and losses to the partnership. However, the temporary regulations list 13 items the certificate must contain and the caption that must appear at the top of the certificate. To ensure uniformity of the certificates and to reduce the likelihood of an inadvertently omitted item causing the certificate to be defective, the IRS developed a form (Form 8804–C, ''Certificate of Partner-Level Items to Reduce Section 1446 Withholding'') to be used by the partner providing a certificate to the partnership. The IRS and the Treasury Department believe that the Form 8804–C will facilitate a partner's ability to provide original and updated certificates.

B. Partners Entitled To Certify Deductions and Losses

1. *Filing period requirement: number of years*

To be eligible to provide a certificate to a partnership the temporary regulations require a partner to have timely filed (or to represent that it will timely file) a U.S. income tax return for each of its preceding four taxable years and for the taxable year during which the certificate is provided and will be considered by the partnership. The partner is also required to have timely paid (or to represent that it will timely pay) all tax shown on such returns. The final regulations clarify that only returns that report income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities will satisfy the tax return filing requirement (for the current or relevant prior years). Accordingly, the partner may not fulfill this requirement with a U.S. income tax return that reports no items of income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities.

Several commentators suggested reducing the temporary regulations' prior years U.S. tax return filing requirement. One commentator suggested reducing the requirement to the lesser of the two prior years or the number of years the partner has been a partner in the relevant partnership. Another commentator suggested reducing the requirement from four to two years.

The IRS and the Treasury Department believe it appropriate to require the foreign partner to have filed a certain number of returns and paid any tax relating to those returns regardless of the number of years the partner has been a member of the relevant partnership. The IRS and the Treasury Department do not believe that a reduction to two years is appropriate. Because the return for the year immediately preceding the year a partner submits a certificate to a partnership may not have been filed by the date when the certificate is submitted, reducing the prior years filing requirement to two years could result in only one return being filed by the date on which the certificate is submitted. In response to these comments, however, the IRS and the Treasury Department have determined that it is appropriate to reduce the prior years filing requirement to three years.

The IRS and the Treasury Department have also decided to modify the filing requirement of a tax return for a preceding taxable year in which the partner did not submit a certificate to any partnership, if the return has a due date (without extensions) before the beginning of the partnership taxable year for which the certificate is provided. The final regulations provide that such returns must be filed and all amounts due with such return (including interest, penalties, and additions to tax, if any) must be paid on or before the earlier of: (1) The date that is one year from the due date (without extensions) of such return; or (2) The date on which the certificate for the current taxable year is submitted to the partnership. Once a partner submits a certificate to a partnership, however, it must timely file all its subsequent years' returns (and timely pay all amounts due with the returns) to submit a certificate to a partnership in a later year. The IRS and the Treasury Department anticipate that this modified rule will permit more foreign partners to provide certificates to partnerships under the final regulations.

2. *Trusts and estates*

One commentator requested that the IRS and the Treasury Department explain why foreign estates and domestic or foreign trusts, other than grantor trusts, are not permitted to certify deductions and losses to partnerships. Another commentator asked that the decedent's compliance record be considered in determining whether the estate can certify deductions and losses to a partnership. The final regulations do not modify the treatment of estates and trusts. The IRS and the Treasury Department continue to believe, as stated in the preamble to the temporary regulations, that because trusts and estates are not always pure conduits for tax purposes it is difficult for a partnership to determine the taxpayer (that is, the trust, estate or beneficiary) that will pay tax on the ECTI allocated to the trust or estate. Further, a decedent's filing history may have limited relevance in predicting the estate's likely compliance.

3. *Tiered partnerships*

In a tiered partnership structure, a lower-tier partnership must withhold 1446 tax on ECTI allocable to an upper-tier foreign partnership that is a partner in the lower-tier partnership. However, if the upper-tier foreign partnership provides sufficient information regarding its partners to the lower-tier partnership, the lower-tier partnership may withhold 1446 tax based on the partners in the upper-tier partnership. These rules may also apply to upper-tier domestic partnerships that have foreign partners. See § 1.1446–5. Similarly, an upper-tier partnership that receives certificates of deductions and losses from its foreign partners may provide the certificates to the lower-tier partnerships.

The final regulations add several rules to ensure that deductions and losses certified to an upper-tier partnership are not taken into account by both the upper-tier partnership and a lower-tier partnership or by more than one lower-tier partnership. A new rule is also added requiring that sufficient information regarding a partner in the upper-tier partnership submitting the certificate be provided to the lower-tier partnership and then to the IRS so that the IRS can reliably associate the ECTI and the certificate with the partner in the upper-tier partnership.

C. Submissions of Certificates

1. *Time lags for submission of certificates*

The temporary regulations provide that the partnership may rely on the first certificate submitted by the foreign partner for a partnership taxable year only if the partnership receives the certificate at least 30 days before the installment due date or the annual Form 8804 filing due date (without regard to extensions) for the partnership taxable year for which the partner would like the certificate to be considered in computing the 1446 tax due with respect to the partner. Updated certificates may only be considered if received at least ten days before the installment due date or the Form 8804 filing date (without regard to extensions). Several commentators questioned the appropriateness of these timing requirements if the partnership is willing to rely on a certification submitted at the last moment and remits the 1446 tax installment or files the final return on a timely basis. The IRS and the Treasury Department agree with the commentators and have removed these requirements in the final regulations.

2. *Resubmission of certificates*

The temporary regulations require the partnership to attach a copy of any certificate, and the computation of 1446 tax due with respect to a partner, to both the Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' and Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' filed with the IRS for any period for which such certificate is considered in computing the partnership's 1446 tax (or any installment of such tax). One commentator suggested that a certificate submitted with Form 8813 should not be required to be submitted with subsequent filings of Form 8813 or with Form 8805. The IRS and the Treasury Department agree with the comment regarding Form 8813. The final regulations provide that a partner's certificate need only be submitted for the first installment period for which it is considered. For subsequent installment periods for which the certificate is considered, the partnership may instead attach a list of the name, taxpayer identification number, and the amount of certified deductions of each foreign partner whose certificate was previously considered during the taxable year and whose certificate was again considered in the subject installment period. The partnership would also indicate if it was relying on the state and local taxes withheld and remitted on behalf of the partner. If the partnership is relying on the de minimis rule for the partner, the partnership would indicate that, in lieu of indicating the amount of certified deductions. However, if a partnership receives an updated certificate from a partner, that certificate must be attached with the Form 8813 for the first installment period it is considered. In all events, a partnership must attach to the Form 8813 and Form 8805, a computation of 1446 tax due with respect to such

partner for all periods for which a certificate received from the partner is considered by the partnership. In addition, in all events the partnership must attach to the Form 8805 a copy of the partner's original or updated certificate, as appropriate.

3. *Denying partnerships the ability to submit certificates*

Consistent with the temporary regulations, the final regulations provide that upon receipt of written notification from the IRS that a foreign partner's certificate is defective, the partnership may no longer rely on the defective certificate or any other certificate submitted by the partner until the IRS notifies the partnership in writing and revokes or modifies the original notice. The final regulations provide that the IRS may also notify the partnership in writing if either a substantial portion of the certificates submitted by the partnership are defective or a substantial amount of the deductions and losses relied on by the partnership in computing its 1446 tax due are reported on one or more defective certificates. Upon receiving that notification the partnership may not rely on any certificate submitted by any partner for the partnership taxable year in which such notification is received or any subsequent partnership taxable year, until the IRS notifies the partnership again in writing and revokes or modifies the original notice.

D. Deductions and Losses Certified to the Partnership

1. *Current year deductions*

The temporary regulations provide that a foreign partner can only certify deductions and losses that are or will be reflected on the partner's U.S. income tax return filed (or to be filed) for a taxable year ending prior to the installment due date or Form 8804 filing date (without regard to extensions) for the partnership taxable year for which the certificate is considered. Therefore, no anticipated deduction or loss with respect to current operations may be considered. One commentator suggested that partners should be permitted to certify current year deductions to the partnership. The IRS and the Treasury Department are concerned about the uncertainty associated with fluctuations in estimates of current-year activities and therefore have not adopted this suggestion.

2. *Charitable deductions*

One commentator requested that partners be permitted to certify charitable contribution deductions. The IRS and the Treasury Department have not adopted this recommendation because of the difficulty a partnership would have in determining the amount of a charitable contribution deduction allowed to the foreign partner. Section 170 provides separate rules for corporations and individuals, the type of charity to which the contribution is made, and the type of property contributed to the charity. In addition, separate rules apply to determine the deduction amount in the case of charitable contribution carryover.

3. *Suspended losses*

One commentator raised a concern that a foreign partner could certify a passive activity loss to a partnership that conducts a different activity in which the partner materially participates. If the partnership took that loss into account it would inappropriately reduce its 1446 tax due with respect to that partner. Because on its income tax return the partner could not offset the loss against its allocable share of partnership ECTI, the partner might inappropriately each year recertify that loss to the partnership. To address that concern the final regulations clarify that a partner must identify any certified deductions and losses that are subject to special limitations at the partner level and provide information to the partnership that will allow the partnership to take into account the special limitations.

4. *Net operating losses*

The temporary regulations provide that a partnership may not consider a partner's net operating loss (NOL) deduction in an amount greater than 90 percent of the partner's allocable share of ECTI. Two commentators discerned that this requirement reflects a concern about the alternative minimum tax (AMT) limitation on NOL deductions and suggested the regulations should be tied to the continuing applicability of the 90 percent AMT limitation on the use of NOL carryovers. The IRS and the Treasury Department have adopted this suggestion. One commentator further suggested that if the 90 percent limitation is retained, or as long as it applies, the regulations should be clarified to explain that the limitation should be applied on a cumulative basis for each installment period. This suggestion has also been adopted. With this clarification, if the partnership's annualized income changes during the year, the NOL deduction that the partnership may take into account can increase or decrease accordingly.

E. Partnership Items Allocable to Partners That Give Rise to Partner Level Deductions, Losses or Credits But Are Not Partnership Allocations of Deductions and Losses Under Section 704

1. *State income taxes*

One commentator suggested allowing the partnership to reduce a foreign partner's ECTI by the amount of any state and local taxes paid by the partnership on behalf of the partner with respect to the partner's allocable share of partnership income. The final regulations adopt this recommendation but provide that the partnership may only consider 90 percent of the state and local taxes withheld and remitted on behalf of the partner but only with respect to the partner's allocable share of ECTI. The partnership may consider these amounts regardless of whether the partner submits a certification of deductions and losses or of its de minimis status to the partnership for the relevant partnership taxable year.

2. *Section 199 deductions*

One commentator suggested allowing a partnership to consider a partner's available deduction under section 199 in determining its section 1446 tax with respect to that partner. The section 199 deduction is a percentage of the lesser of the qualified production activities income (QPAI) of the taxpayer for the taxable year or the taxpayer's taxable income or, in the case of an individual, adjusted gross income determined without regard to section 199 for the taxable year. In addition, the deduction is limited to 50 percent of the Form W–2, ''Wage and Tax Statement'', wages for the taxpayer for the taxable year. Depending on a taxpayer's gross receipts and assets, there are up to three permissible methods for calculating QPAI.

In the case of a pass-through entity (such as a partnership), section 199(d)(1)(A) provides that the section 199 deduction is calculated at the partner level. A partner may be a member of more than one partnership and may engage in its own qualifying activities under section 199. The QPAI and Form W–2 wages, and any other QPAI and Form W–2 wages reported by a partnership to the partner, must be added to the partner's own calculation of QPAI and Form W–2 wages. Therefore, because of the difficulty in a partnership determining the section 199 deduction of a partner, the IRS and the Treasury Department determined it would be inappropriate to allow a partnership to consider the section 199 deduction of a partner in determining

the amount of section 1446 tax to be withheld with respect to that partner.

3. *Section 470 deductions*

One commentator suggested that the regulations allow the partnership to consider partner-level deductions previously suspended under section 470 (limitation on deductions allocable to property used by governments or other tax-exempt entities) and relating to the partnership, when the deductions become available. Section 470 currently allows the partnership to consider these suspended partner-level deductions in determining the partner's ECTI. Therefore, there is no need to modify the regulations in response to this suggestion.

4. *Tax credits*

One commentator suggested that a foreign partner should be able to certify credits to the partnership and that the partnership be able to consider current-year credits in determining the amount of its 1446 tax. Section 1446 requires that a partnership pay a withholding tax on its ECTI allocable to foreign partners. It provides no authority for partnerships to consider credits in determining the amount of 1446 tax the partnership is required to withhold and pay. Therefore, this suggestion has not been adopted.

F. Effect on Reasonable Reliance on Certificate of Deductions and Losses

The temporary regulations provide that a partnership is not relieved from liability for 1446 tax under section 1461 or for any applicable addition to the tax, interest, or penalties if a partner's certificate is defective or the partner submits an updated certificate that increases the 1446 tax due with respect to such partner. If a certificate is determined to be defective for a reason other than the amount or character of the deductions and losses set forth on such certificate (for example, the partner failed to timely file a U.S. income tax return), then the partnership is liable for the entire 1446 tax amount under section 1461 (or any installment of such tax).

Further, under the temporary regulations, if it is determined that a certificate is defective because the actual deductions and losses available to the partner are less than the amount certified to the partnership (other than when it is determined that the partner certified the same deduction or loss to more than one partnership), the partnership is liable for 1446 tax under section 1461 (or any installment of such tax) only to the extent the amount of certified deductions and losses taken into account by the partnership is greater than the amount determined to be actually available to the partner and permitted to be used under regulations.

Similarly, if it is determined that a certificate is defective because the character of the certified deductions and losses is erroneous, the partnership is liable for 1446 tax under section 1461 (or any installment of such tax) only to the extent the actual character of the deductions and losses results in an increase in the 1446 tax due with respect to such partner.

However, the temporary regulations provide that the partnership is not liable for the addition to tax under section 6655 (as applied though § 1.1446–3) for the period during which the partnership reasonably relied on the certificate. Further, the temporary regulations provide that although a partnership is generally liable for the 1446 tax, any addition to the tax, interest, and penalties, the partnership may be relieved of some penalties in certain circumstances.

One commentator stated that reasonable reliance on a certificate should protect a partnership against liability not only under section 6655, but also for liability for the tax under section 1461, interest on the tax under section 6601, and various other penalty provisions. The IRS and the Treasury Department have not adopted this recommendation. Use of the certification procedures under § 1.1446–6 is voluntary. The foreign partner is not required to submit a certificate of deductions and losses to the partnership. Moreover, even if the partnership receives a certificate it may consider all, none or only a portion of the certified deductions and losses when calculating its payment of 1446 tax. Further, as the temporary regulations stated, the partnership may be relieved of some penalties in certain circumstances.

G. Relief for a Partnership's Failure To Comply Timely With the Requirements of This Section

Among other requirements, to apply the rules of § 1.1446–6 the partnership must receive a valid certificate from the foreign partner and attach the certificate, along with the computation of 1446 tax due with respect to that partner, to certain Forms 8813 and Form 8805 filed with respect to that partner. The IRS and the Treasury Department believe that a reasonable cause standard should be applied to determine whether a partnership that failed to attach the certificate and 1446 tax computation to the relevant filing is eligible for an extension of time to comply with this requirement.

Under the reasonable cause standard, if a partnership that may otherwise rely on a partner's certificate fails to comply timely with the requirements of § 1.1446–6, the partnership is considered to have satisfied the timeliness requirement if it demonstrates, to the satisfaction of the Area Director, Field Examination, Small Business/Self-Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the partnership's return for the taxable year, that such failure was due to reasonable cause and not willful neglect. Once the partnership becomes aware of the failure, the partnership must demonstrate reasonable cause and must satisfy the filing requirement by attaching the certificate and the partnership's computation of 1446 tax due with respect to that partner to an amended Form 8813 or Forms 8804 and 8805 (that amends the tax return to which the certificate and computation should have been attached). A written statement must be included that explains the reasons for the failure to comply.

In determining whether the partnership has reasonable cause, the Director shall determine whether the partnership acted reasonably and in good faith based on all the facts and circumstances. The Director shall notify the partnership in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause or if additional time will be needed to make such determination. If the Director fails to notify the partnership within 120 days of the filing, the partnership shall be considered to have demonstrated to the Director that such failure was due to reasonable cause and not willful neglect.

H. Effective/Applicability Dates and Transition Rule

The final regulations are effective for partnership taxable years beginning after December 31, 2007. However, any certificate submitted on or before July 28, 2008 that met the requirements of the temporary regulations shall not be considered defective solely because it does not meet the requirements of the final regulations. However, any certificate (including any updated certificates and status reports) submitted, or required to be submitted, after July 28, 2008, must comply with the requirements of these final regulations.

II. Modifications to the 2005 Final Regulations

The final regulations make several clarifying and conforming changes to the 2005 final regulations including with respect to the calculation of installment payments of 1446 tax when a partnership considers a certificate received under § 1.1446–6 and the information that a lower-tier partnership must receive from an upper-tier partnership when the lower-tier partnerships pays 1446 tax on behalf of the partners in the upper-tier partnership. Also the prior year safe harbor provision in § 1.1446–3 was conformed with section 6655 to provide that the partnership must compute its current year 1446 tax installments based on the total 1446 tax (without regard to § 1.1446–6) as computed for the prior taxable year. These revisions are effective for partnership taxable years beginning after December 31, 2007.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only a few small entities are expected to be impacted by these collections and the burden associated with such collections is estimated to be 0.5 hours. Moreover, the information collection in § 1.1446–6 and its use is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1446–0 is amended is as follows:
■ 1. Adding entries for § 1.1446–6.
■ 2. Removing entries for § 1.1446–6T.
■ 3. Revising the entry for § 1.1446–7.

The addition and revision read as follows:

§ 1.1446–0 Table of contents.

* * * * *

§ 1.1446–6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

(a) In general.
(1) Purpose and scope.
(2) Reasonable reliance on a certificate.
(b) Foreign partners to whom this section applies.
(1) In general.
(2) Definitions.
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(iii) Qualifying U.S. income tax return.
(3) Special rules.
(c) Reduction of 1446 tax with respect to a foreign partner.
(1) General rules.
(i) Certified deductions and losses.
(A) Deductions and losses from the partnership.
(B) Deductions and loss from other sources.
(C) Limit on the consideration of a partner's net operating loss deduction.
(D) Limitation on losses subject to certain partner level limitations.
(E) Certification of deductions and losses to other partnerships.
(F) Partner level use of deductions and losses certified to a partnership.
(ii) De minimis certificate for nonresident alien individual partners.
(A) In general.
(B) Requirements for exception.
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(i) Form of certification.
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(*2*) Other circumstances requiring an updated certificate.
(*3*) Form and content of updated certificate.
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(3) Notification to partnership when a partner's certificate cannot be relied upon.
(4) Partner to receive copy of notice.
(5) Notification to partnership when no foreign partner's certificate can be relied upon.
(6) Partnership notification to partner regarding use of deductions and losses.
(7) Partner's certificate valid only for partnership taxable year for which submitted.
(d) Effect of certificate of deductions and losses on partner and partnership.
(1) Effect on partner.
(i) No effect on liability for income tax of foreign partner.
(ii) No effect on partner's estimated tax obligations.
(iii) No effect on partner's obligation to file U.S. income tax return.
(2) Effect on partnership.
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(A) In general.
(B) Certificate defective because of amount or character of deductions and losses.
(3) Partnership level rules and requirements.
(i) Filing requirement.
(ii) Reasonable cause for failure to timely file a valid certificate and computation.
(A) Determining reasonable cause.
(B) Notification.
(e) Examples.
(f) Effective/Applicability date.
(g) Transition rule.
§ 1.1446–7 Effective/Applicability date.

■ **Par. 3.** For each entry in the table in the ''Section'' column remove the phrase in the ''Remove'' column and add the phrase in the ''Add'' column in its place.

Section	Remove	Add
1.1443–1(a) (First sentence)	1.1446–6T	1.1446–6
1.1446–1(a)	1.1446–6T	1.1446–6
1.1446–1(b)	§ 1.1446–6T	§ 1.1446–6

Section	Remove	Add
1.1446–1(c)(5) (Second sentence)	1.1446–6T	1.1446–6
1.1446–2(a) (Third sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(1) (Second sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(1) (Last sentence)	1.1446–6T	1.1446–6
1.1446–2(b)(3)(iii) (First sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(3)(iii) (Second sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(3)(vii)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(5) *Example 3* (Sixth sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–3(b)(2)(v)(F) (Second sentence)	§ 1.1446–6T	§ 1.1446–6(c)(1)(ii)
1.1446–3(d)(1)(i) (Third sentence)	§ 1.1446–6T	§ 1.1446–6(d)(3)
1.1446–3(d)(1)(iii) (Third sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–3(e)(3)(i) (Last sentence)	§ 1.1446–6T	§ 1.1446–6(d)(2)(i)
1.1446–5(f) *Example 1*(i) (Ninth sentence)	§ 1.1446–6T	§ 1.1446–6

■ **Par. 4.** Section 1.1446–3 is amended by:

■ 1. Removing the acronym ''ECTI'' from the first sentence in paragraph (b)(1) and adding the language ''effectively connected taxable income (ECTI)'' in its place.

■ 2. Revising paragraphs (b)(2)(i) and (b)(3)(i)(A).

The revisions read as follows:

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

* * * * *

(b) * * *

(2) * * * (i) *Application of the principles of section 6655*—(A) *In general.* Installment payments of 1446 tax required during the partnership's taxable year are based upon partnership ECTI for the portion of the partnership taxable year to which the payments relate, and, except as set forth in this paragraph (b)(2) or paragraph (b)(3) of this section, shall be calculated using the principles of section 6655. The principles of section 6655, except as otherwise provided in § 1.6655–2, are applied to annualize the partnership's items of effectively connected income, gain, loss, and deduction to determine each foreign partner's allocable share of partnership ECTI. Each foreign partner's allocable share of partnership ECTI is then multiplied by the relevant applicable percentage for the type of income allocable to the foreign partner under paragraph (a)(2) of this section. The respective 1446 tax amounts are then added for each foreign partner to yield an annualized 1446 tax with respect to such partner. The installment of 1446 tax due with respect to a foreign partner equals the excess of the section 6655(e)(2)(B)(ii) percentage of the annualized 1446 tax for that partner (or, if applicable, the adjusted seasonal amount) for the relevant installment period, over the aggregate amount of 1446 tax installment payments previously paid with respect to that partner during the partnership's taxable year. The partnership's total 1446 tax installment payment equals the sum of the installment payments due for such period on behalf of all the partnership's foreign partners.

(B) *Calculation rules when certificates are submitted under § 1.1446–6*—(*1*) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under § 1.1446–6(c)(1)(i) or (ii) and the amount of state and local taxes permitted to be considered under § 1.1446–6(c)(1)(iii). For this purpose, a partnership shall first annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before—

(*i*) Considering under § 1.1446–6(c)(1)(i) the partner's certified deductions and losses;

(*ii*) Determining under § 1.1446–6(c)(1)(ii) whether the 1446 tax otherwise due with respect to that partner is less than $1,000 (determined with regard to any certified deductions or losses); or

(*iii*) Considering under § 1.1446–6 (c)(1)(iii) the amount of state and local taxes withheld and remitted on behalf of the partner.

(*2*) The amount of the limitation provided in § 1.1446–6(c)(1)(i)(C) shall be based on the partner's allocable share of these annualized amounts. For any installment period in which the partnership considers a partner's certificate, the partnership must also consider the following events to the extent they occur prior to the due date for paying the 1446 tax for such installment period—

(*i*) The receipt of an updated certificate or status update from the partner under § 1.1446–6(c)(2)(ii)(B) certifying an amount of deductions or losses that is less than the amount reflected on the superseded certificate (see § 1.1446–6(e)(2) *Example 4*);

(*ii*) The failure to receive an updated certificate or status update from the partner that should have been provided under § 1.1446–6(c)(2)(ii)(B); and

(*iii*) The receipt of a notification from the IRS under § 1.1446–6(c)(3) or (c)(5) (see § 1.1446–6(e)(2) *Example 5*).

* * * * *

(3) * * * (i) * * *

(A) The average of the amount of the current installment and prior installments during the taxable year is at least 25 percent of the total 1446 tax (without regard to § 1.1446–6) for the prior taxable year;

* * * * *

■ **Par. 5.** Section 1.1446–5(c)(2) is amended by adding two new sentences after the first sentence to read as follows:

§ 1.1446–5 Tiered partnership structures.

* * * * *

(c) * * *

(2) * * * The lower-tier partnership required to pay 1446 tax must be able to provide the information necessary for the IRS to determine the chain of ownership, allocation of effectively connected items at each partnership level, as well as to the ultimate beneficial owner of the effectively connected items, and whether the amount of 1446 tax paid was appropriate. This information should permit each partnership in the tiered structure and the IRS to reliably associate any effectively connected items allocable to such upper-tier partnership, as well as to the ultimate beneficial owner of the effectively connected items. * * *

§ 1.1446–6T [Removed]

■ **Par. 6.** Section 1.1446–6T is removed.

■ **Par. 7.** Section 1.1446–6 is added to read as follows:

§ 1.1446–6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

(a) *In general*—(1) *Purpose and scope.* This section provides rules regarding when a partnership required to pay

withholding tax under section 1446 (1446 tax), or an installment of 1446 tax, may consider certain partner-level deductions and losses in computing its 1446 tax obligation under § 1.1446–3, or otherwise not pay a de minimis amount of 1446 tax due with respect to a nonresident alien individual partner. A partnership determines the applicability of the rules of this section on a partner-by-partner basis for each installment period and when completing its Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' and paying 1446 tax for the partnership taxable year. Except with respect to certain state and local taxes paid by the partnership on behalf of the partner, to apply the rules of this section with respect to a foreign partner, the partnership must receive a certificate from such partner for each partnership taxable year. Paragraph (b) of this section identifies the foreign partners to which this section applies. Paragraph (c) of this section identifies the deductions and losses that a foreign partner may certify to the partnership as well as the state and local taxes paid by the partnership on behalf of the foreign partner that can be taken into account without a certification, and establishes an exception that permits a partnership to not pay a de minimis amount of 1446 tax with respect to a nonresident alien partner. Paragraph (c) of this section also sets forth the requirements for a valid certificate. Paragraphs (a)(2) and (d) of this section establish when a partnership may rely on and consider a foreign partner's certificate in computing its 1446 tax, and the effects of relying on such a certificate. Paragraph (d) of this section also describes the effects of a partnership relying on a certificate (including an updated certificate) and the reporting requirements of a partnership with respect to a certificate. Paragraph (e) of this section sets forth examples that illustrate the rules of this section. Paragraph (f) of this section provides the Effective/Applicability date. Paragraph (g) of this section provides a transition rule.

(2) *Reasonable reliance on a certificate.* Subject to § 1.1446–2 and the rules of this section, a partnership receiving a certificate (including an updated certificate or status update under paragraph (c)(2)(ii)(B) of this section) of deductions and losses from a partner provided in accordance with the provisions of this section may reasonably rely on such certificate (to the extent of the certified deductions and losses or other representations set forth in the certificate) until such time that it has actual knowledge or reason to know that the certificate is defective or that the time for receiving an updated certificate or status update from the partner under paragraph (c)(2)(ii)(B) of this section has expired. For this purpose, a partnership shall be considered to have actual knowledge or reason to know that a certificate is defective upon receipt of written notification from the IRS under paragraph (c)(3) or (c)(5) of this section.

(b) *Foreign partner to whom this section applies*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section, a foreign partner to whom this section applies is a foreign partner that meets the requirements of this paragraph (b)(1).

(i) The partner has provided valid documentation to the partnership to which a certificate is submitted under this section in accordance with § 1.1446–1.

(ii) If the partner's current taxable year is the first taxable year in which the partner submits a certificate to any partnership, the partner has filed (or will file) a qualifying U.S. income tax return for each of its three taxable years ending before the end of the partnership's taxable year for which the partner is submitting a certificate (regardless of whether it was a partner in that partnership during each of these years). A qualifying U.S. income tax return for a taxable year that is prior to the first taxable year the partner submits a certificate to any partnership is a U.S. income tax return filed within the time specified in paragraph (b)(2)(iii) of this section.

(iii) If the current taxable year of the partner is not the first taxable year in which the partner submits a certificate to any partnership, the partner met the requirements in paragraph (b)(1)(ii) of this section for the first taxable year in which it submitted a certificate to any partnership and has filed (or will file) a qualifying U.S. income tax return for its first taxable year in which it submitted a certificate to any partnership and each subsequent taxable year ending before the beginning of the current taxable year (regardless of whether it was a partner in any partnership during each of those years). A qualifying U.S. income tax return for a taxable year that is prior to the taxable year the partner submits a certificate to any partnership is a U.S. income tax return filed within the time specified in paragraph (b)(2)(iii) of this section.

(iv) The partner files a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) for its taxable year in which a certificate is provided to any partnership.

(2) *Definitions*—(i) *U.S. income tax return.* A U.S. income tax return means a Form 1040NR, ''U.S. Nonresident Alien Income Tax Return,'' in the case of a nonresident alien individual and a Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation,'' in the case of a foreign corporation.

(ii) *Timely-filed.* Only for purposes of this section, a U.S. income tax return shall be considered timely-filed if the return is filed on or before the due date set forth in section 6072(c), plus any extension of time to file such return granted under section 6081.

(iii) *Qualifying U.S. income tax return.* A U.S. income tax return shall constitute a qualifying U.S. income tax return if the return reports income or gain that is effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and if the return is described in paragraph (b)(2)(iii)(A), (B), or (C) of this section. A protective return described in § 1.874–1(b)(6) or § 1.882–4(a)(3)(vi) is not a qualifying U.S. income tax return for purposes of this section.

(A) A U.S. income tax return for a partner's preceding taxable year in which it did not submit a certificate to any partnership (but not including a taxable year following the first taxable year in which the partner submitted a certificate to any partnership), with a due date as set forth in section 6072(c), not including any extensions of time to file, which falls before the beginning of the current partnership taxable year for which the certificate is provided is described in this paragraph (b)(2)(iii)(A) if the return is filed and all amounts due with respect to such return (including interest, penalties, and additions to tax, if any) are paid on or before the earlier of—

(1) The date that is one year after the due date set forth in section 6072(c) for such return, not including any extensions of time to file; or

(2) The date on which the certificate for the current partnership taxable year is submitted to the partnership.

(B) A U.S. income tax return for a partner's preceding taxable year in which it did not submit a certificate to any partnership (but not including a taxable year following the first taxable year in which the partner submitted a certificate to any partnership), with a due date as set forth in section 6072(c), not including any extensions of time to file, which falls within the current partnership taxable year for which the certificate is provided is described in this paragraph (b)(2)(iii)(B) if the return is timely-filed and all amounts due with respect to such return are timely paid.

(C) A U.S. income tax return for a taxable year in which the partner submits a certificate to any partnership and for a taxable year following the first taxable year in which the partner submits a certificate to any partnership is described in this paragraph (b)(2)(iii)(C) if the return is timely-filed and all amounts due with such return are timely paid with respect to such return.

(3) *Special rules*—(i) In the case of a partnership (upper-tier partnership) that is a partner in another partnership (lower-tier partnership)—

(A) The rules of this section may apply to reduce or eliminate the 1446 tax (or any installment of such tax) of the lower-tier partnership with respect to a foreign partner of the upper-tier partnership only to the extent the provisions of § 1.1446–5 apply to look through the upper-tier partnership to the foreign partner of such upper-tier partnership and the certificate described in paragraph (c) of this section is provided by such foreign partner to the upper-tier partnership and, in turn, provided to the lower-tier partnership with other appropriate documentation (see § 1.1446–5(c) and (e));

(B) An upper-tier partnership that submits a certificate of deductions and losses or a de minimis certificate to a lower-tier partnership may not submit that certificate to another lower-tier partnership;

(C) An upper-tier partnership that relies on a certificate submitted to it by a foreign partner under this section for computing its 1446 tax due on effectively connected taxable income (ECTI) allocable to that partner (other than ECTI allocable to it from a lower-tier partnership) may not submit that certificate to any lower-tier partnership; and

(D) In addition to any other information required by this section, a lower-tier partnership must submit with a Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' and Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for which it relies on a certificate from an upper-tier partnership to reduce the 1446 tax due with respect to a foreign partner of the upper-tier partnership, sufficient information so that the IRS may reliably associate the ECTI and the certificate of deductions and losses with the partner in the upper-tier partnership submitting the certificate, including the name, taxpayer identification number (TIN) and allocation of effectively connected items at each partnership tier, as well as to the ultimate upper-tier partner submitting the certificate.

(ii) This section shall not apply to a partner that is a foreign estate or its beneficiaries.

(iii) This section shall not apply to a partner that is a trust or to its beneficiaries, except to the extent that such trust is owned by a grantor or other person under subpart E of subchapter J of the Internal Revenue Code, the documentation requirements of § 1.1446–1 have been met by the grantor or other owner of such trust, and the certificate described in paragraph (c) of this section is provided by the grantor or other owner of such trust to the partnership.

(iv) This section shall not apply to a partner in a publicly-traded partnership subject to § 1.1446–4.

(c) *Reduction of 1446 tax with respect to a foreign partner*—(1) *General rules.* Under paragraph (c)(1)(i) of this section a foreign partner to whom this section applies may certify to a partnership for a partnership taxable year that it has certain deductions (other than charitable deductions) and losses properly allocated and apportioned to gross income that is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States, and that the partner reasonably expects those deductions and losses to be available and claimed on the partner's U.S. income tax return to be filed for that taxable year. Under paragraph (c)(1)(ii) of this section, a nonresident alien individual partner to whom this section applies may also certify to a partnership for a partnership taxable year that its only investment or activity giving rise to effectively connected items for the partnership's taxable year that ends with or within the partner's taxable year is (and will be) the partner's investment in the partnership. A certificate submitted by a foreign partner to a partnership under this section must be in accordance with the form and requirements set forth in paragraph (c)(2)(ii) of this section. Under paragraph (c)(1)(iii) of this section, a partnership may take into account certain state and local taxes withheld by the partnership on behalf of the partner.

(i) *Certified deductions and losses*—(A) *Deductions and losses from the partnership.* Under this paragraph (c)(1)(i)(A), a partner may certify to a partnership for a partnership taxable year deductions (other than charitable deductions) and losses properly allocated and apportioned to gross income which is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States, that are reported on a Form 1065 (Schedule K–1), ''Partner's Share of Income, Credits, Deductions, etc.,'' issued (or to be issued) to the partner by the partnership for a prior partnership taxable year, that are (or will be) reported on a qualifying U.S. income tax return for a partner's taxable year that ends before the installment due date or the close of the partnership taxable year for which the partner is certifying such deductions and losses, and that the partner reasonably expects to be available and claimed on a qualifying U.S. income tax return for the partner's taxable year ending with or after the close of the partnership taxable year. A partner that has a loss reported on a Form 1065 (Schedule K–1) issued (or to be issued) to the partner by the partnership for a prior partnership taxable year, but that is not (and will not be) reported on a qualifying U.S. income tax return for a prior taxable year of the partner because the loss is suspended under section 704(d) may also certify such suspended loss to the partnership under this paragraph (c)(1)(i)(A).

(B) *Deductions and losses from other sources.* Under this paragraph (c)(1)(i)(B), a foreign partner may certify to a partnership for a partnership taxable year deductions (other than charitable deductions) and losses properly allocated and apportioned to gross income that is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States and that are from sources other than the partnership to whom the certificate is submitted if the deductions and losses are (or will be) reported on a qualifying U.S. income tax return of the partner for a taxable year that ends before the installment due date or the close of the partnership taxable year for which the partner is certifying the deductions and losses and the partner reasonably expects the deductions and losses to be available and claimed on the qualifying U.S. income tax return filed for its taxable year ending with or after the close of the partnership taxable year. Any deductions and losses certified under this paragraph (c)(1)(i)(B) that are allocated to the partner from another partnership must be reported on a Form 1065 (Schedule K–1) issued (or to be issued) to the partner by such other partnership. However, the partner may not certify any deduction or loss allocated to it from another partnership that is suspended under section 704(d).

(C) *Limit on the consideration of a partner's net operating loss deduction.* A partnership may not consider a net operating loss deduction (as determined

under section 172) certified by the partner under this paragraph (c)(1)(i) in an amount greater than the percentage limitation, if any, provided in section 56(a)(4) and (d) multiplied by the partner's allocable share of ECTI from the partnership reduced by all other certified deductions and losses whether or not taken into account by the partnership, as well as deductions considered under paragraph (c)(1)(iii) of this section.

(D) *Limitation on losses subject to certain partner level limitations.* Pursuant to paragraph (c)(2)(i) of this section, a partner must identify any certified losses or deductions that are subject to special limitations at the partner level (for example, sections 465 and 469) and provide information to the partnership that will allow the partnership to take the special limitations into account. For example, where a partner certifies a loss to the partnership that is a passive activity loss under section 469, the partner shall identify the activities the partnership conducts that the partner expects will be passive activities. The partnership shall then ensure that these limitations are taken into account when determining the 1446 tax due with respect to the partner.

(E) *Certification of deductions and losses to other partnerships.* Deductions and losses certified to a partnership for a taxable year of the partnership may not be certified for the taxable year of another partnership that begins or ends with or within the taxable year of the partnership to which the deductions and losses were certified.

(F) *Partner level use of deductions and losses certified to a partnership.* Any deductions and losses certified to a partnership for a taxable year of the partner and considered by the partnership in computing its section 1446 tax due may not be considered by that partner for the same taxable year in computing the amount of its required installments under section 6654(d) or 6655(d) on income unrelated to the partnership to which the partner has submitted the certificate.

(ii) *De minimis certificate for nonresident alien individual partners*—(A) *In general.* Under this paragraph (c)(1)(ii), a nonresident alien individual partner to whom this section applies and that satisfies the requirements of paragraph (c)(1)(ii)(B) of this section may certify to a partnership that its only activity giving rise to effectively connected income, gain, deduction, or loss for the partnership's taxable year that ends with or within the partner's taxable year is (and will be) the partner's investment in the partnership. A partnership that receives a certificate from a nonresident alien partner under this paragraph (c)(1)(ii) and that may reasonably rely on such certificate is not required to pay 1446 tax (or any installment of such tax) with respect to such partner if the partnership estimates that the annualized (or, in the case of a partnership completing its Form 8804, the actual) 1446 tax otherwise due with respect to such partner is less than $1,000, without taking into account any deductions or losses certified by the partner to the partnership under paragraph (c)(1)(i) of this section or any amounts under paragraph (c)(1)(iii) of this section.

(B) *Requirements for exception.* The requirements of this paragraph (c)(1)(ii)(B) are met if the nonresident individual alien partner's only activity giving rise to effectively connected income, gain, deduction, or loss for the partnership taxable year that ends with or within the partner's taxable year is (and will be) the partner's investment in the partnership. For this purpose, if the partner has (or has reason to expect to have) income or gain described in section 864(c)(6), such income or gain shall be considered derived from a separate investment activity. A certificate submitted by a nonresident alien individual partner under this paragraph (c)(1)(ii) is valid even if such certificate does not certify deductions and losses to partnership under this section. A nonresident alien individual partner that submits a certificate to a partnership under this paragraph (c)(1)(ii) must notify the partnership in writing and revoke such certificate within 10 days of the date that the partner invests or otherwise engages in another activity that may give rise to effectively connected income, gain, deduction, or loss for the partner's taxable year. For example, while an investment in a U.S. real property interest (as defined in section 897(c)) would not give rise to an activity requiring a notification (unless an election is in effect under section 871(d)), the disposition of the U.S. real property interest would give rise to an activity requiring a notification.

(iii) *Consideration of certain current year state and local taxes.* In addition to any deductions and losses certified by a foreign partner to a partnership under paragraph (c)(1)(i) of this section, the partnership may consider as a deduction of such partner 90-percent of any state and local income taxes withheld and remitted by the partnership on behalf of such partner with respect to the partner's allocable share of partnership ECTI. The partnership may consider the amount of state and local taxes of the foreign partner determined under this paragraph (c)(1)(iii) regardless of whether the foreign partner submits a certificate to the partnership under paragraph (c)(1)(i) or (ii) of this section.

(2) *Form and time of certification*—(i) *Form of certification.* A partner's certification to a partnership under paragraph (c)(1)(i) or (iii) of this section shall be made using Form 8804–C, ''Certificate Of Partner-Level Items to Reduce Section 1446 Withholding'' in accordance the instructions of the form and the rules of this section.

(ii) *Time for certification provided to partnership*—(A) *First certificate submitted for a partnership's taxable year.* Provided the other requirements of this section are met, a partnership may only rely on the first certificate received from a foreign partner for any 1446 tax installment due or Form 8804 filing due (without regard to extensions) on or after the date on which the certificate is received. See § 1.1446–3 for 1446 tax installment due dates. See also paragraph (e) of this section for examples illustrating the rules of this paragraph (c)(2).

(B) *Updated certificates and status updates*—(*1*) *Preceding year tax returns not yet filed.* If a foreign partner's U.S. income tax return for a preceding taxable year has not been filed as of the time the partner submits to the partnership its first certificate under this paragraph (c), the certificate shall specify this fact and set forth the filing due date for such return set forth in section 6072(c), plus any extension of time to file such return granted under section 6081 and the regulations under section 6081. The partner shall also submit an updated certificate to the partnership in accordance with this paragraph (c) within 10 days of the date the partner files its U.S. income tax return for any such taxable year. In addition, prior to the partnership's final 1446 tax installment due date the partner shall provide to the partnership, under penalties of perjury, a status update regarding any U.S. income tax return for the prior taxable year that has not (or will not) be filed as of the final installment due date. The status update must identify the due date, set forth in section 6072(c), plus any extension of time to file such return granted under section 6081 and the regulations under section 6081, for any un-filed return identified in the first certificate and state whether the first certificate submitted may continue to be considered by the partnership. If the partnership does not receive an updated certificate or a status update from the partner prior to the partnership's final

installment due date, the partnership shall disregard the partner's certificate when computing the 1446 tax due with respect to that partner for the final installment period and when completing its Form 8804 for the taxable year. In addition, the foreign partner shall not be permitted to submit an additional or substitute certificate for the disregarded certificate. See § 1.1446–3(b)(2)(i) for computation requirements for installment payments of 1446 tax when a partnership receives, or fails to receive, an updated certificate or status update. See also paragraph (e)(2) *Examples 4 and 8* of this section. Notwithstanding this paragraph (c)(2)(ii)(B)(*1*), a partner that can meet the requirements of this section for a subsequent partnership taxable year may submit a certificate to the partnership under this section for such taxable year.

(*2*) *Other circumstances requiring an updated certificate.* If at any time during the partnership taxable year the partner determines that its most recent certificate furnished to the partnership for such taxable year is incorrect, then the partner shall submit to the partnership an updated certificate in accordance with this paragraph (c) within 10 days of such determination. For example, if the partner determines that the amount or character of the certified deductions or losses is incorrect, the partner shall submit an updated certificate to the partnership. See § 1.1446–3(b)(2)(i) for computation requirements for installment payments of 1446 tax when a partnership receives an updated certificate.

(*3*) *Form and content of updated certificate.* The updated certificate required by this paragraph (c)(2)(ii) must be provided using the form and instructions identified in paragraph (c)(2)(i) of this section. The updated certificate must indicate that it is an updated certificate filed in accordance with this paragraph (c)(2)(ii). The partner is not required to attach to the updated certificate a copy of the certificate that is being updated (superseded certificate).

(*4*) *Partnership consideration of an updated certificate.* A partnership may consider an updated certificate, that meets the requirements of this paragraph (c), that is received prior to an installment due date in the same partnership taxable year for which the superseded certificate was provided, or prior to the due date of its Form 8804 (without regard to extensions) to be filed for the year the superseded certificate was provided. A partnership must consider an updated certificate that meets all the requirements of this paragraph (c) if it would increase the amount of 1446 tax the partnership would pay by the next installment due date, if any, or the due date of its Form 8804. An updated certificate considered by the partnership under this paragraph (c)(2)(ii)(B)(4) supersedes all prior certificates submitted by the foreign partner for the same partnership taxable year, beginning with the installment period or Form 8804 filing date for which the partnership considers the updated certificate. See paragraph (e)(2) *Example 4* of this section.

(3) *Notification to partnership when a partner's certificate cannot be relied upon.* If the IRS determines, in its discretion based on all the facts and circumstances, that a foreign partner's certificate is defective (or that it lacks information sufficient to make this determination after providing written request for such information to the partnership), the IRS shall notify the partnership of such determination in writing. Upon receipt of such written notification, the partnership shall not rely on any certificate submitted by that foreign partner for the partnership taxable year to which the defective certificate relates (or any subsequent partnership taxable year), until the IRS provides written notification to the partnership revoking or modifying the original written notification. For purposes of this section, a foreign partner's certificate of deductions and losses shall be defective if—

(i) The partner is not described in paragraph (b) of this section;

(ii) Any deductions or losses set forth in such certificate are not described in paragraph (c)(1)(i) of this section;

(iii) The timing requirements under paragraph (c)(2) of this section for submitting an original certificate, an updated certificate or a status update to the partnership are not met;

(iv) The certificate does not include all of the information required by paragraph (c)(2)(i) of this section;

(v) Any representation made on the certificate is incorrect;

(vi) The actual amount of deductions and losses available to the partner is less than the amount of deductions and losses certified to the partnership for the partnership taxable year and considered by the partnership in determining its 1446 tax due; or

(vii) There is a failure to comply with any other provision of this section.

(4) *Partner to receive copy of notice.* If the IRS notifies a partnership under paragraph (c)(3) of this section that a certificate of a foreign partner is defective, the IRS shall send a copy of such notice to the partner's address as shown on the certificate. The partnership shall also promptly furnish a copy of the IRS notice to such partner.

(5) *Notification to partnership when no foreign partner's certificate can be relied upon.* If the IRS determines, in its discretion based on all the facts and circumstances, that there would be a substantial reduction in section 1446 tax as a result of the submission of one or more defective certificates or that a substantial portion of all certificates being submitted by partners to the partnership and by the partnership to the IRS are defective (or lack information sufficient to make this determination), then the IRS shall notify the partnership of such determination in writing. Upon receipt of such written notification, the partnership shall not rely on any certificate submitted by any partner for the partnership taxable year to which the notice relates or any subsequent partnership taxable year, until the IRS provides written notification to the partnership revoking or modifying the original notice.

(6) *Partnership notification to partner regarding use of deductions and losses.* Unless § 1.1446–3(d)(1)(i)(A) or (B) applies (relating to waiver of notice of tax paid during the partnership taxable year), a partnership must notify each foreign partner of the amount of such partner's certified deductions and losses and state and local taxes, if any, taken into account under this paragraph (c) in determining the 1446 tax due with respect to such partner for each installment period or Form 8804 filing date, as applicable.

(7) *Partner's certificate valid only for partnership taxable year for which submitted.* A partnership that receives a certificate from a partnership under this paragraph (c) shall consider such certificate only for the partnership taxable year for which the certificate is submitted, as set forth on the certificate.

(d) *Effect of certificate of deductions and losses on partners and partnership*—(1) *Effect on partner*—(i) *No effect on liability for income tax of foreign partner.* A foreign partner that certifies deductions and losses to a partnership under this section is not relieved of liability for income tax on its allocable share of ECTI from the partnership. Further, the submission of a certificate under this section does not constitute an acceptance by the IRS of the amount or character of the deductions or losses certified therein.

(ii) *No effect on partner's estimated tax obligations.* A foreign partner that certifies deductions and losses to a partnership under this section is not relieved of any estimated tax obligation otherwise applicable to such partner

with respect to income or gain allocated to such partner from the partnership.

(iii) *No effect on partner's obligation to file U.S. income tax return.* The submission of a certificate under paragraph (c) of this section does not relieve the foreign partner from its obligation to file a U.S. income tax return even if as a result of the partnership considering the certificate the partner would have no additional tax due with such return. See also § 1.1446–3(f).

(2) *Effect on partnership*—(i) *Reasonable reliance to relieve partnership from addition to tax under section 6655.* A partnership that has reasonably relied on a certificate received from a foreign partner and complied with the filing requirements of paragraph (d)(3)(i) of this section, shall not be liable for any addition to tax under section 6655 (as applied through § 1.1446–3) for any period during which the partnership reasonably relied on such certificate, even if such certificate is later determined to be defective or the partner submits an updated certificate under paragraph (c)(2) of this section that increases the 1446 tax due with respect to such partner.

(ii) *Continuing liability for withholding tax under section 1461 and for applicable interest and penalties*—(A) *In general.* Except as otherwise provided in this section, a partnership that has reasonably relied on a certificate received from a foreign partner and complied with the filing requirements of paragraph (d)(3)(i) of this section, is not relieved from liability for the 1446 tax (or any installment of such tax) under section 1461, any additions to the tax, interest or penalties. However, the partnership may be relieved of additions to the tax or penalties in certain circumstances. See §§ 301.6651–1(c) and 301.6724–1 of this chapter. Further, see § 1.1446–3(e) which deems a partnership to have paid 1446 tax with respect to ECTI allocable to a partner in certain circumstances. See also paragraph (e)(2) *Example 5* of this section.

(B) *Certificate defective because of amount or character of deductions and losses.* If a certificate is determined to be defective because the actual amount of deductions and losses available to the partner is less than the amount reflected on the certificate (other than when it is determined that the partner certified the same deduction or loss to more than one partnership), or because the character of the certified deductions and losses is erroneous, the partnership shall be liable for 1446 tax under section 1461 (or any installment of such tax) with respect to such partner to the extent the partnership considered an amount of certified deductions and losses greater than the amount actually available to the partner and permitted to be used under §§ 1.1446–1 through 1.1446–5 and this section, or to the extent that the proper character of the certified deductions and losses results in a greater amount of 1446 tax due with respect to such partner. See paragraph (e)(2) *Example 6* of this section.

(3) *Partnership level rules and requirements*—(i) *Filing requirement.* A partnership that relies in whole or in part on a certificate received from a partner under this section in computing its 1446 tax due with respect to such partner must still file Form 8813 or Form 8804 and 8805, whichever is applicable, for the period for which the certificate is considered, even if as a result of relying on the certificate no 1446 tax (or an installment of such tax) is due with respect to such foreign partner. See generally § 1.1446–3(d)(1). Except as otherwise provided in this paragraph (d)(3)(i), the partnership must attach a copy of the foreign partner's certificate, and the computation of the 1446 tax due with respect to such partner, to both the Form 8813 and Form 8805 filed with the IRS for any installment period or year for which such certificate is considered in computing the partnership's 1446 tax. See § 1.1446–3(d)(1)(iii) requiring the partnership to furnish Form 8805 to the IRS and such foreign partner even if no 1446 tax is paid on behalf of the partner. The partnership must include in that computation the amount of state and local taxes described in paragraph (c)(1)(iii) of this section taken into account in computing the 1446 tax due with respect to that partner. The partnership must also attach a computation of the 1446 tax due with respect to a partner for whom only state and local taxes described in paragraph (c)(1)(iii) are taken into account. For an installment period other than the first installment period for which the partnership considers a foreign partner's certificate or updated certificate, the partnership may, instead of attaching any partner's certificate, attach to Form 8813 a list containing the name, TIN, the amount of certified deductions and losses, and the amount of state and local taxes the partnership may consider under paragraph (c)(1)(iii) of this section for each foreign partner whose certificate was relied upon. For purposes of the preceding sentence, if the partnership is relying on a certificate received under paragraph (c)(1)(ii) of this section, instead of providing the amounts described in the prior sentence, it should attach a statement to Form 8813 which provides that, relying on that certificate, no 1446 tax is due with respect to that partner.

(ii) *Reasonable cause for failure to timely file a valid certificate and computation.* This paragraph (d)(3)(ii) provides the sole source of relief for a partnership that fails to timely file a valid certificate or attach a computation of 1446 tax as required under paragraph (d)(3)(i) of this section. To permit the partnership to reasonably rely on such certificate, the partnership shall be considered to have satisfied the requirements of paragraph (d)(3)(i) of this section if the partnership demonstrates to the Area Director, Field Examination, Small Business/Self-Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the partnership's return for the taxable year, that such failure was due to reasonable cause and not willful neglect and if once the partnership becomes aware of the failure, the partnership attaches the certificate and computation, as well as a written statement setting forth the reasons for the failure to comply with the requirements of paragraph (d)(3)(i) of this section, to an amended Form 8813 or amended Forms 8804 and 8805 for the relevant period.

(A) *Determining reasonable cause.* In determining whether the partnership has reasonable cause, the Director shall consider whether the partnership acted reasonably and in good faith considering all the facts and circumstances.

(B) *Notification.* If the IRS has notified, as provided in paragraph (c)(3) of this section, the partnership that the certificate is defective or that no foreign partner's certificate may be relied upon, as provided in paragraph (c)(5) of this section, the partnership will be deemed not to have acted reasonably and in good faith. Otherwise, the Director shall notify the partnership in writing within 120 days of the amended filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. If the Director fails to notify the partnership within 120 days of the amended filing, the partnership shall be considered to have demonstrated to the Director that such failure was due to reasonable cause and not willful neglect.

(e) *Examples.* (1) The rules of this section are illustrated by the examples in paragraph (e)(2) of this section. Except as otherwise provided, in each example assume:

(i) Section 1.1446–3(b)(2)(v)(F) (relating to the de minimis exception to paying 1446 tax) does not apply;

(ii) Paragraph (c)(1)(ii) of this section (relating to a nonresident alien individual partner whose sole investment generating effectively connected income or gain is the partnership) does not apply;

(iii) All income and losses are ordinary;

(iv) For purposes of applying paragraph (c)(1)(i)(C) of this section, the percentage limitation under section 56(a)(4) and (d) is 90 percent;

(v) Any loss is not a passive activity loss within the meaning of section 469;

(vi) The partnership uses an acceptable annualization method under § 1.1446–3;

(vi) NRA is a nonresident alien individual who maintains a calendar taxable year for U.S. tax purpose;

(vii) B and C are U.S. individuals who maintain a calendar taxable year; and

(viii) Any partnership maintains a calendar taxable year.

(2) The examples are as follows:

Example 1. Qualifying U.S. income tax return. (i) NRA and B form a partnership (PRS) in year 4 to conduct a trade or business in the United States. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. NRA submits a certificate to PRS (using Form 8804–C) on March 20, year 4, to be considered by PRS in determining its 1446 tax due with respect to NRA for the first installment period in the year 4. The Form 8804–C states that NRA reasonably expects to have an effectively connected net operating loss of $5,000 available to offset its allocable share of ECTI from PRS in year 4. Prior to year 4, NRA had not submitted a certificate to a partnership under this section. NRA filed (or will file) its year 1 U.S. income tax return on March 11, year 3; its year 2 U.S. income tax return on February 12, year 4; its year 3 U.S. income tax return on April 13, year 4; and its year 4 U.S. income tax return on May 14, year 5. NRA paid or (will pay) all amounts due with respect to the returns (including interest, penalties, and additions to tax, if any) by the date they are filed. NRA's years 1 though 3 U.S. income tax returns report income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities.

(ii) To be eligible to submit a certificate of deductions and losses to PRS under this section, NRA must satisfy the requirements of paragraph (b)(1) of this section. In accordance with § 1.1446–1, NRA provided valid documentation to PRS to establish its status for purposes of section 1446. NRA's year 1 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(A) of this section. Although NRA filed its year 1 return after the due date of the return (determined under section 6072(c) without regard to any extension of time to file) the return was filed on March 11, year 3, which was on or before the earlier of June 15, year 3, the date one year after its section 6072(c) due date without regard to any extension of time to file, and March 20, year 4, the date on which NRA submitted the certificate to PRS. NRA's year 2 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(A) of this section. Although NRA filed its year 2 return after the due date of the return (determined under section 6072(c) without regard to any extension of time to file) the return was filed on February 12, year 4, which was on or before the earlier of June 15, year 4, the date one year after its section 6072(c) due date without regard to any extension of time to file, and March 20, year 4, the date on which NRA submitted the certificate to PRS. NRA's year 3 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(B) of this section. Because NRA filed its year 3 U.S. income tax return on April 13, year 4, the return will be considered timely-filed under paragraph (b)(2)(ii) of this section, as the due date under section 6072(c) was June 15, year 4. NRA's year 4 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(C) of this section. Because NRA filed its year 4 U.S. income tax return on May 14, year 5, the return will be considered timely-filed under paragraph (b)(2)(ii) of this section. Accordingly, NRA meets the conditions of paragraph (b)(1) of this section and is eligible to provide a certificate of deductions and losses to PRS for year 4.

Example 2. Subsequent year qualifying U.S. income tax return. (i) Assume the same facts as in Example 2. Further, NRA and C form a second partnership (XYZ) in year 7 to conduct a trade or business in the United States. NRA and C provide XYZ appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. NRA did not submit a certificate under this section to any partnership for years 5 and 6. NRA submits a certificate to XYZ (using Form 8804–C) on April 10, year 7, to be considered by XYZ in determining its 1446 tax due with respect to NRA for its first installment period in year 7. The certificate states that NRA reasonably expects to have an effectively connected net operating loss of $8,000 available to offset its allocable share of ECTI from XYZ in year 7. Further, the certificate contains all of the necessary representations required under this section. NRA will file its U.S. income tax return for year 5 on March 25, year 7, (after its section 6072(c) due date and any extension of time to file that could have been granted under section 6081), its U.S. income tax return for year 6 on April 26, year 7; and its U.S. income tax return for year 7 on May 27, year 8. NRA will pay all amounts due with the returns (including interest, penalties, and additions to tax, if any) by the dates they are filed. NRA's years 5, 6, and 7 U.S. income tax returns will report income or gain that is effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities.

(ii) To be eligible to submit a certificate of deductions and losses to XYZ under this section, NRA must satisfy the requirements of paragraph (b)(1) of this section. NRA provided valid documentation to XYZ in accordance with § 1.1446–1. As described in Example 2, NRA's year 4 U.S. income tax return is a qualifying U.S. income tax return because it will report income or gain effectively connected with a U.S. trade or business and is described under paragraph (b)(2)(iii)(C) of this section. Although NRA's year 5 U.S. income tax return reports income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities it is not a qualifying U.S. tax return under paragraph (b)(2)(iii) of this section. Because NRA submitted a certificate to PRS in year 4, to constitute a qualifying U.S. income tax return the year 5 U.S. income tax return must be timely-filed and all amounts due with such return must be timely paid. See paragraph (b)(2)(iii)(C) of this section. However, NRA will not file its U.S. income tax return for year 5 until March 25, year 7, (after its section 6072(c) due date and any extension of time to file that could have been granted under section 6081). Because the year 5 tax return is not a qualifying U.S. income tax return under paragraph (b)(2)(iii) of this section, NRA does not satisfy the requirements of paragraph (b)(1)(ii) of this section and, therefore, may not submit a certificate of deductions and losses to XYZ under this section in year 7.

Example 3. General application of the rules of this section. NRA and B form a partnership (PRS) to conduct a trade or business in the United States. NRA and B are equal partners under the partnership agreement. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. Prior to the formation of PRS, NRA had not invested in or engaged in the conduct of a U.S. trade or business. PRS incurs a $1,500 effectively connected net operating loss in years 1 and 2. The loss incurred in each is allocated equally between NRA and B. NRA has filed a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) for years 1 and 2 that report its allocable share of effective connected net operating loss allocated to it from PRS, as reported on the Form 1065 (Schedule K–1) issued to NRA for each year.

(i) In year 3, NRA may not submit a certificate to PRS under paragraph (c) because it will not have filed qualifying U.S. income tax returns for the preceding three years. In year 3, PRS has ECTI of $1,000 that is allocated equally between NRA and B. PRS

satisfies its 1446 tax obligation with respect to NRA for year 3.

(ii) In year 4, PRS estimates that it will have ECTI of $4,000, which will be allocated equally between NRA and B. On or before April 15th of year 4 (the first installment due date), NRA submits a certificate to PRS under this section (using Form 8804–C) certifying that it reasonably expects to have an effectively connected net operating loss of $1,000 ($750 loss in both years 1 and 2, less $500 of income in year 3) available to offset its allocable share of ECTI from PRS in year 4. As of the date the certificate is submitted, NRA has received the Form 1065 (Schedule K–1) from PRS for year 3 but has not yet filed its U.S. income tax return for year 3.

(iii) With respect to year 4, and based upon paragraph (b)(1) of this section, NRA can include year 3 (NRA's preceding taxable year) as one of the preceding three years that it has filed or will file qualifying U.S. income tax returns (within the meaning of paragraph (b)(2)(iii) of this section). Therefore, provided PRS has, in accordance with paragraph (a)(2) of this section, no actual knowledge or reason to know the certificate is defective, PRS may reasonably rely on NRA's certificate. Accordingly, PRS may consider NRA's certificate to reduce the 1446 tax that would otherwise be required to be paid on NRA's behalf. Specifically, subject to paragraph (c)(1)(i)(C) of this section, the $1,000 of net losses that have been reported on Forms 1065 (Schedule K–1) issued to NRA that are available to reduce NRA's U.S. income tax on NRA's allocable share of effectively connected income or gain allocable from PRS may be used to reduce the $2,000 of ECTI estimated to be allocable to NRA. As a result, PRS must pay 1446 tax on only $1,100 of NRA's allocable share of partnership ECTI for the first installment period in year 5 ($2,000 − ($1,000 × .90)). PRS must pay 1446 tax of $96.25 for its first installment period with respect to the ECTI allocable to NRA ($1,100 (net ECTI after considering certified losses) × .35 (withholding tax rate) × .25 (section 6655(e)(2)(B) percentage for the first installment period)). See § 1.1446–3(b)(2). Pursuant to paragraph (d)(3) of this section, PRS must attach NRA's certificate and PRS's computation of its 1446 tax obligation with respect to NRA to its Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' filed for the first installment period. Under paragraph (c)(2)(ii)(B) of this section, NRA is required to provide an updated certificate on or before the 10th day after NRA files its U.S. income tax return for year 3, even if the updated certificate results in no change to the amount of deductions and losses reported on the superseded certificate.

(iv) The results are the same if NRA had not yet received a Form 1065 (Schedule K–1) from PRS for year 3. See paragraph (c)(1)(i)(A) of this section.

Example 4. Updated certificate submitted for losses. On January 1, year 8, NRA and B form a partnership (PRS) to conduct a trade or business in the United States. NRA and B are equal partners in PRS. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. During years 1 through 7 NRA held an interest in another partnership (XYZ) that conducted a trade or business in the United States. NRA timely-filed (within the meaning of paragraph (b)(2) of this section) a U.S. income tax return years 1 through 6 reporting its allocable year of ECTI (or loss) from XYZ (and timely paid all tax shown on such returns). NRA files its U.S. income tax return for year 7 on June 9, year 8 (and timely pays all tax due with such return). Therefore, NRA has filed qualifying U.S. income tax returns (within the meaning of paragraph (b)(2)(iii) of this section) for years 1 through 7. During years 1 through 7, NRA's only investment generating effectively connected items was its interest in XYZ. The XYZ partnership liquidated and ceased doing business on December 31, year 7.

(i) On or before April 15, year 8, PRS receives from NRA a valid certificate under this section using Form 8804–C in which NRA certifies that it reasonably expects to have available effectively connected net operating losses in the amount of $5,000. Among other statements made in accordance with paragraph (c) of this section, NRA represents that it has not yet filed its year 7 U.S. income tax return, but will timely file such return (and timely pay all tax due with such return). For its first installment period in year 8, PRS estimates that it will earn taxable income of $10,000 for the year which will be allocated equally to NRA and B (NRA's allocable share of PRS's ECTI is $5,000).

(ii) Provided PRS has, in accordance with paragraph (a)(2) of this section, no actual knowledge or reason to know the certificate is defective, PRS may reasonably rely on NRA's certificate when computing its 1446 tax obligation for the first installment period. PRS is limited under paragraph (c)(1)(i)(C) of this section and PRS may only consider $4,500 ($5,000 × .90) of the certified net operating loss. After consideration of the certified loss, PRS owes 1446 tax in the amount of $43.75 for the first installment period ($5,000 estimated allocable ECTI less $4,500 (certified loss as limited under paragraph (c)(1)(i)(C)) × .35 (1446 tax applicable percentage) × .25 (section 6655(e)(2)(B) percentage for the first installment period)). See § 1.1446–3(b)(2). Pursuant to paragraph (d)(3) of this section, PRS must attach a copy of NRA's certificate and the computation of 1446 tax due with respect to NRA to the Form 8813 filed with respect to NRA.

(iii) PRS's estimate of ECTI allocable to NRA for the second installment period remains unchanged from the first installment period. On June 10, year 8, NRA provides PRS an updated certificate reporting that NRA now reasonably expects to have an effectively connected net operating loss of $4,000 available to offset its allocable share of ECTI from PRS in year 4. NRA provided the updated certificate within 10 days of filing its U.S. income tax return for the year 7 taxable year, as required by paragraph (c)(2)(ii)(B) of this section. Provided the updated certificate is otherwise valid, PRS may rely on the updated certificate for the second installment period (due date June 15, year 8). Even if the updated certificate were not valid, PRS could no longer rely on the original certificate.

(iv) Under paragraph (d) of this section, PRS is not relieved from liability for the 1446 tax due with respect to NRA under section 1461 if it relies on a certificate determined to be defective, or if it receives an updated certificate reporting an amount of deductions and losses less than the amount reported on the superseded certificate. Under the principles of section 6655 (as applied through § 1.1446–3), PRS is required to have paid 50-percent of the annualized 1446 tax due with respect to NRA on or before the due date of the second installment period (section 6655(e)(2)(B) percentage for the second installment period). Under paragraph (c)(2)(ii)(B) of this section, because NRA's updated certificate is valid for the second installment period, if PRS considers a certificate for that period it must consider the updated certificate. Under paragraph (c)(1)(i)(C) of this section, PRS can only consider $3,600 ($4,000 × .90) of NRA's updated effectively connected net operating loss. Assuming PRS considers NRA's updated certificate for the second installment period, PRS must have paid a total of $245 of 1446 tax with respect to the ECTI estimated to be allocable to NRA as of the second installment due date ($1,400 ($5,000 ECTI less $3,600 net operating loss deduction) × .35 (withholding tax rate) × .50 (section 6655(e)(2)(B) percentage for the second installment period)). After considering PRS's payment of 1446 tax for the first installment period, PRS is required to pay $201.25 for the second installment period ($245 less previous payment of $43.75). See § 1.1446–3(b)(2). Further, if PRS considers NRA's updated certificate for the second installment period, when PRS files Form 8813 it must attach the updated certificate along with PRS's computation of 1446 tax due with respect to NRA.

(v) Under paragraph (d) of this section, PRS is not liable for the addition to the tax under section 6655 (as applied through § 1.1446–3) for the first installment period because PRS reasonably relied on NRA's certificate of losses for that period.

(vi) Assume that PRS's estimate of its ECTI allocable to NRA for the third and fourth installment periods is the same as for the first and second installment periods. Assume PRS may reasonably rely on NRA's updated certificate in calculating its payment of 1446 tax for the third and fourth installment periods. The third installment of 1446 tax would be $122.50 (($5,000 − $3,600) × .35 × .75 = $367.50 − $245 (total previous payments)). The fourth installment of 1446 tax would be $122.50 (($5,000 − $3,600) × .35 × 1.00 = $490 − $367.50 (total previous payments)). See § 1.1446–3(b)(2). PRS must attach to each Form 8813 a computation of the 1446 tax due with respect to NRA that takes into account the amount of effectively connected net operating loss reported on NRA's updated certificate.

(vii) Because NRA's certified net operating loss has not changed for the third and fourth installments, in lieu of attaching NRA's certificate, PRS may attach a statement containing NRA's name, TIN, and the certified net operating loss amount. However, PRS must attach NRA's certificate and a computation of the 1446 tax due with respect

to NRA that takes into account NRA's certified net operating loss to the Form 8805 filed with respect to NRA. See paragraph (d)(3) of this section.

Example 5. IRS determines in subsequent taxable year that partner's certificate is defective because partner failed to timely file a U.S. income tax return. NRA and B form a partnership (PRS) in year 1 to conduct a trade or business in the United States. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. In year 4, NRA timely submits a certificate under this section (using Form 8804–C) to be considered by PRS for its first installment period. The certificate reports that NRA reasonably expects to have an effectively connected net operating loss of $5,000 available to offset its allocable share of ECTI from PRS in year 4. Further, the certificate contains all of the necessary representations required under this section. PRS estimates for each installment period that NRA's allocable share of ECTI will be $5,000 for the taxable year. PRS's actual operating results for the year result in $5,000 of ECTI allocable to NRA.

(i) PRS reasonably relies on (within the meaning of paragraph (a)(2) of this section) NRA's certificate when computing each installment payment during year 4 and the 1446 tax due on Form 8804 and appropriately considers the limitation in paragraph (c)(1)(i)(C) of this section. As a result, PRS paid $175 of 1446 tax on behalf of NRA for the taxable year ($5,000 of ECTI less $4,500 net operating loss deduction × .35 applicable percentage). As required under paragraph (d) of this section, PRS attached the certificate to the Form 8813 for the first installment period and the Form 8805 for year 4. Because NRA did not submit an updated certificate to PRS in year 4, PRS attached to the Forms 8813 for the second, third and fourth installment periods a statement containing NRA's name, TIN, and the certified net operating loss as well as the computation of 1446 tax due with respect to NRA reflecting the amount of net operating loss considered.

(ii) In year 5, NRA timely submits to PRS a certificate under this section to be considered for the first installment period. The certificate represents that NRA reasonably expects to have an effectively connected net operating loss of $5,000 available to offset its allocable share of ECTI from PRS in year 5. For the first installment period, PRS estimates that NRA's allocable share of partnership ECTI is $5,000. PRS reasonably relies on the certificate for the first installment period and determines that it is required to make a 1446 tax installment payment of $43.75 ($5,000 allocable ECTI less $4,500 (certified net operating loss as limited under paragraph (c)(1)(i)(C) of this section) × .35 (1446 tax applicable percentage) × .25 (section 6655(e)(2)(B) percentage for the first installment period)). See § 1.1446–3(b)(2). PRS makes the installment payment with the Form 8813 filed for the first installment period, and complies with paragraph (d)(3) of this section by attaching NRA's certificate and the computation of 1446 tax due with respect to NRA to the Form 8813.

(iii) The IRS provides written notification to PRS on June 1, year 5, (pursuant to paragraph (c)(3) of this section) that the certificate received from NRA in year 4 is defective because NRA failed to file a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) for one of the preceding taxable years as required under paragraph (b)(1) of this section. The notice further states that PRS is not to rely on any certificate received from NRA in year 5.

(iv) Under paragraph (d)(2)(ii) of this section, because the certificate submitted by NRA in year was determined to be defective for a reason other than the amount or character of the certified deductions and losses, under section 1461 PRS is fully liable for the 1446 tax due with respect to NRA's allocable share of ECTI year 4 without regard to the certificate. The total 1446 tax due for year 4 without regard to the certificate is $1,750 ($5,000 ECTI × .35) and PRS paid $175 of 1446 tax in year 4. Therefore, PRS owes $1,575 of 1446 tax. However, PRS may be deemed to have paid the outstanding 1446 tax due if NRA paid all of its U.S. tax due in year 4. See § 1.1446–3(e).

(v) However, because PRS did not have actual knowledge or reason to know that the certificate NRA submitted in year 4 was defective, PRS reasonably relied on the certificate for purposes of paragraph (d)(2) of this section. Therefore, PRS is not liable for an addition to the tax with respect to its underpayment of 1446 tax under the principles of section 6655 (as applied through § 1.1446–3) for any installment period in year 4.

(vi) However, PRS is generally liable for interest under section 6601 and for the failure to pay addition to tax under section 6651(a)(2) on the $1,575 of 1446 tax due for year 4 for the period from April 15, year 5 (last date prescribed for payment of 1446 tax) to the date PRS pays the 1446 tax or is deemed to have paid the 1446 tax under § 1.1446–3(e).

(vii) With respect to the year 5, PRS reasonably relied on NRA's certificate when computing its first installment payment (due on April 15, year 5). Therefore, in accordance with paragraph (d)(2)(i) of this section, PRS will not be liable for an addition to the tax under the principles of section 6655 (as applied through § 1.1446–3) for the first installment period. However, because the IRS provided written notification to PRS on June 1, year 5, to disregard any certificate received from NRA for year 5, PRS may not rely on any certificate received from NRA certificate (or any new certificate provided by NRA) when it computes its second installment payment in year 5. PRS is not permitted to consider any certificate submitted by NRA until the IRS provides written notification to PRS revoking or modifying the original notice. PRS's second installment payment in year 5 must include the additional amount of 1446 tax it would have paid for the first installment period without regard to the certificate received from NRA.

Example 6. IRS determines in subsequent taxable year that partner's certificate is defective because partner's actual losses are less than amount certified and considered by the partnership. Assume the same facts as in *Example 5,* except that the IRS determines that NRA's certificate submitted in year 4 is defective because the actual effectively connected net operating loss available to NRA for year 4 was $1,000 rather than the $5,000 certified.

(i) Under paragraph (d)(2)(ii) of this section, PRS is not relieved from its liability for 1446 tax under section 1461 when it relies on a certificate of losses from a foreign partner that is later determined to be defective. However, when the IRS determines that a partner's certificate is defective because of the amount of the certified deductions and losses, the partnership is liable for the 1446 tax, interest, additions to tax, and penalties to the extent the amount of certified deductions and losses taken into account when computing 1446 tax (or, unless there was reasonable reliance on the certificate, any installment of such tax) is greater than the actual amount of available deductions and losses. Here, PRS considered the certified deductions and losses in the amount of $4,500. The IRS subsequently determined that NRA only had $1,000 of actual losses, only $900 of which were permitted to be considered under paragraph (c)(1)(i)(C) of this section. Accordingly, PRS is liable for the 1446 tax due with respect to the portion of the overstated losses that it considered when computing its 1446 tax. The remaining 1446 tax due for year 4 is $1,260 ($3,600 ($4,500 less $900) of excess losses considered × .35). However, PRS may be deemed to have paid the $1,260 of 1446 tax under § 1.1446–3(e) if NRA has paid all of NRA's U.S. income tax.

(ii) If PRS had considered only $900 (or a lesser amount)) of NRA's certified net operating loss when computing and paying its 1446 tax during year 4 then, under paragraph (d)(2)(iii) of this section, PRS would not be liable for 1446 tax because it did not consider a net operating loss greater than the amount actually available to NRA.

Example 7. Partner with different taxable year than partnership. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. PRS conducts a trade or business in the United States and generates effectively connected income. FC maintains a June 30 fiscal taxable year end, while DC and PRS maintain a calendar taxable year end. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. FC and DC are the only persons that have ever been partners in PRS. For its year 1 through year 3 taxable years, PRS issued Forms 1065 (Schedule K–1) reporting in the aggregate $100 of net loss to each partner. For its year 4 taxable year, PRS issued Forms 1065 (Schedule K–1) to its partners reporting $150 of loss to each partner. All of the losses reported on the Forms 1065 (Schedule K–1) are effectively connected to PRS's and FC's trade or business in the United States.

(i) Assume that FC submits a valid certificate under this section certifying losses to the partnership for the partnership's year 5 taxable year. Further, assume that FC's only source of effectively connected income, gain, deduction, or loss is the activity of PRS.

(ii) For PRS's first installment period in year 5, FC may only certify deductions and

losses under this section in the amount of $100 (the losses as reported on the Forms 1065 (Schedule K–1) issued for PRS's year 1 through 3 taxable years). Under section 706, the taxable income of a partner shall include the income, gain, loss, deduction, or credit of the partnership for the partnership taxable year ending within or with the taxable year of the partner. PRS's year 4 calendar taxable year ends during FC's fiscal taxable year ending June 30, year 5. Therefore, under paragraph (c)(1) of this section, as of April 15, year 5 (the last date FC may submit its first certificate under paragraph (c) of this section to have it considered for PRS's first installment due date of April 15, year 5), FC's allocable share of the PRS losses for years 1 through 3 are the only losses that FC can represent have been or will be reported on an FC U.S. income tax return filed for a taxable year ending prior to such installment due date.

(iii) The result in paragraph (ii) of this *Example 7* is the same for the year 5 second installment period, the due date of which is June 15, year 5.

(iv) FC may submit an updated certificate under this section after June 30, year 5, which includes the $150 loss for year 4. PRS may consider such an updated certificate for its third installment period (due date September 15, year 5), provided the updated certificate is received by the due date for such installment in accordance with paragraph (c) of this section.

Example 8. Failure to provide status update with respect to prior year unfiled returns. FC, a foreign corporation, and DC, a domestic corporation, form a partnership (PRS) to conduct a trade or business in the United States. FC and DC provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. FC and DC are equal partners in PRS, and all partnership items are allocated equally between FC and DC.

(i) In the current taxable year FC submits a certificate under this section using Form 8804–C prior to PRS's first installment due date. FC represents that it has filed or will file a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) in each of the preceding three taxable years. FC specifies that it has not filed its U.S. income tax return for the immediately preceding taxable year. FC also represents that it will timely file its U.S. income tax return for the partnership taxable year during which the certificate is considered (and will timely pay all tax due with such return). Assume all other requirements under paragraph (c) of this section are met for FC's certificate to be valid.

(ii) Provided that PRS does not possess actual knowledge or reason to know that FC's certificate is defective under paragraph (a)(2) of this section, PRS may reasonably rely on FC's certificate for its first, second, and third installment payments.

(iii) If FC does not submit to PRS either an updated certificate or a status update as required by paragraph (c)(2)(ii)(B)(*1*) of this section by December 15th (PRS's final installment due date), PRS must disregard FC's certificate when computing its fourth installment payment of 1446 tax and when completing its Form 8804 for the taxable year. PRS's payment of 1446 tax for its fourth installment period must include the additional amount of 1446 tax it would have paid in the first, second and third installment periods had it not considered FC's certificate. Further, even if the status update is provided by December 15th, PRS may only rely on the certificate if the status update does not contradict the original certificate and such update indicates that the immediately preceding year's return will be timely filed. Finally, even if the status update is provided by December 15th, FC must also submit an updated certificate to the partnership in accordance with paragraph (c) of this section within 10 days of the date FC timely files its U.S. income tax return for the preceding taxable year.

Example 9. Partnership consideration of certified deductions and losses or de minimis certificate. For purposes of this example assume paragraph (c)(1)(ii) of this section may apply. On January 1, year 4, NRA and B form a partnership (PRS) to conduct a trade or business in the United States. NRA and B are equal partners in PRS and all partnership items are shared equally. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. During years 1 through 3, NRA's only activity generating effectively connected items was an interest in partnership XYZ. XYZ allocated NRA a loss for all three years. NRA filed qualifying U.S. income tax returns (within the meaning of paragraph (b)(2)(iii) of this section) reporting its allocable share of losses from XYZ in years 1 through 3. The XYZ partnership dissolved on December 31, year 3.

(i) In year 4, NRA's only activity giving rise to effectively connected income, gain, deduction, or loss is its interest in PRS. NRA submits to PRS a valid certificate (using Form 8804–C) certifying under paragraph (c)(1)(i) its effectively connected net operating losses from years 1 through 3 and under (c)(1)(ii) of this section that its only activity giving rise to effectively connected income, gain, deduction, or loss for the PRS taxable year that ends with or within its taxable year is (and will be) its investment in PRS.

(ii) During year 4, PRS allocates ECTI to NRA. If the 1446 tax otherwise due on the annualized amount allocated to NRA is less than $1,000, determined without regard to any deductions and losses certified by NRA under paragraph (c)(1)(i) of this section, PRS may consider the certificate received from NRA under paragraph (c)(1)(ii) of this section and not pay 1446 tax (or any installment of such tax) with respect to NRA. Alternatively, PRS may consider the deductions and losses certified by NRA under paragraph (c)(1)(i) of this section.

(iii) Regardless of whether PRS considers NRA's certification under paragraph (c)(1)(i) or (c)(1)(ii) of this section in computing its 1446 tax due with respect to NRA, PRS must file Form 8813 for all installment periods as well as a Form 8805 for NRA with its Form 8804. If PRS considers NRA's certification under paragraph (c)(1)(i) or (c)(1)(ii) of this section, PRS must attach to each Form 8813, as well as to the Form 8805, a computation of the 1446 tax with respect to NRA that takes into account its consideration of NRA's certificate. In addition, PRS must attach NRA's certificate to the Form 8813 for the first installment period it considers the certificate, as well as to the Form 8805. For all subsequent installment periods, PRS may attach a statement containing NRA's name, and TIN. If PRS is relying on NRA's certified losses under paragraph (c)(1)(i) of this section, the statement must indicate the amount of losses and deductions NRA certified. If PRS is relying on NRA's certification under paragraph (c)(ii) of this section, the statement must indicate that it is relying on NRA meeting the requirements under paragraph (c)(1)(ii) of this section and the 1446 tax on the annualized amount allocated to NRA is less than $1,000. See paragraph (d)(3)(i) of this section.

Example 10. Application of transition rule. NRA and B form a partnership (PRS) on January 1, 2004, to conduct a trade or business in the United States. NRA and B are equal partners in PRS and all partnership items are shared equally. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. For its 2004 through 2007 tax years, PRS issued Forms 1065 (Schedule K–1) to NRA and B reporting a $1,000 net loss from its U.S. trade or business to each partner for each year (for an aggregate loss of $4,000 per partner). During the 2004 through 2007 tax years, NRA's only activity generating effectively connected items was its investment in PRS.

(i) On February 10, 2008, NRA submitted a certificate to PRS, reporting its aggregate $4,000 effectively connected loss to PRS, that met the requirements of § 1.1446–6T(c) (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008. The certificate stated that NRA had timely filed its U.S. income tax returns for the 2004, 2005 and 2006 tax years, and that it would timely file a U.S. income tax return for its 2007 tax year. For the first and second installments period in 2008, PRS estimates that it will earn ECTI of $10,000.

(ii) Because the certificate submitted by NRA to PRS on February 10, 2008, met the requirements of § 1.1446–6T (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008, PRS may consider such certificate when computing its 1446 tax due for the first and second installment period even if the certificate does not meet all the requirements of paragraph (c) of this section.

(iii) NRA timely files its U.S. income tax return for the 2007 tax year on July 24, 2008. In accordance with paragraph (c)(2)(ii)(B)(*1*) of this section, within 10 days of filing such return NRA prepares an updated certificate to be submitted to PRS certifying that it reasonably expects to have only $3,500 of losses available to reduce its allocable share of ECTI from PRS. Because the updated certificate will be submitted after July 28, 2008, to be valid the updated certificate must meet the requirements of paragraph (c) this section.

(f) *Effective/Applicability date.* Except as otherwise provided in this paragraph (f), the rules of this section are

applicable for partnership taxable years beginning after December 31, 2007. The rules of paragraphs (b)(3)(i)(B) through (D) shall apply to partnership taxable years beginning after July 28, 2008.

(g) *Transition rule.* A certificate that met the requirements of § 1.1446–6T(c) (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008, submitted on or before July 28, 2008 by a partner that met the requirements of § 1.1446–6T(b) (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008, shall not be considered defective because it does not meet the requirements of this section. However, any certificate (including any updated certificates and status updates) submitted, or required to be submitted, under paragraph (c) of this section after July 28, 2008, must meet the requirements of this section. See paragraph (e)(2) *Example 10* of this section.

■ **Par. 8.** In § 1.1446–7, the section heading is revised and two new sentences are added at the end of the paragraph to read as follows:

§ 1.1446–7 Effective/Applicability date.

* * * The revisions to §§ 1.1446–3(b)(2), 1.1446–3(b)(3)(i)(A) and 1.1446–5(c)(2) contained in the final regulations published in 2008 apply to partnership taxable years beginning after December 31, 2007. See § 1.1446–6(f) and (g) for the Effective/Applicability date and Transition rule for § 1.1446–6.

■ **Par. 9.** In § 1.1464–1, paragraph (a) is amended by adding one sentence at the end of the paragraph and new paragraph (c) is added to read as follows:

§ 1.1464–1 Refunds or credits.

(a) * * * With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4.

* * * * *

(c) *Effective/Applicability date.* The last two sentences in paragraph (a) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 10.** In § 1.6071–1, paragraph (c)(15) is revised and paragraph (d) is added to read as follows:

§ 1.6071–1 Time for filing returns and other documents.

* * * * *

(c) * * *

(15) For provisions relating to the time for filing an annual information return on Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for any tax withheld under chapter 3 of the Internal Revenue Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see § 1.1461–1(c) and § 1.1446–3(d).

* * * * *

(d) *Effective/Applicability date.* The references to Form 8805 and § 1.1446–3(d) in paragraph (c)(15) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 11.** In § 1.6091–1, paragraph (b)(17) and paragraph (c) are added to read as follows:

§ 1.6091–1 Place for filing returns or other documents.

* * * * *

(b) * * *

(17) For the place for filing information returns on Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' with respect to certain amounts paid on behalf of foreign partners, see the instructions to the form.

(c) *Effective/Applicability date.* Paragraph (b)(17) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 12.** In § 1.6151–1, paragraph (d)(2) is amended by adding one sentence at the end of the paragraph and paragraph (e) is added to read as follows:

§ 1.6151–1 Time and place for paying tax shown on returns.

* * * * *

(d) * * *

(2) * * * With respect to section 1446, the previous sentence shall apply only to a publicly traded partnership described in § 1.1446–4.

(e) *Effective/Applicability date.* Paragraph (d)(2) of this section shall apply to publicly traded partnerships described in § 1.1446–4 for partnership taxable years taxable years beginning after *April 29, 2008.*

■ **Par. 13.** In § 1.6302–2, paragraphs (a)(1)(i), (a)(2) and (g) are revised to read as follows:

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

(a) * * * (1) * * *

(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent who, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month beginning on or after January 1, 1973, an aggregate amount of undeposited taxes of $200 or more shall deposit such aggregate amount with an authorized financial institution (see paragraph (b)(1)(ii) of this section) within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section with respect to a quarter monthly period which occurred during such month. With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4.

* * * * *

(2) *Cross reference.* For rules relating to the adjustment of deposits, see §§ 1.1461–2(b) and 1.6414–1. For rules requiring payment of any undeposited tax, see § 1.1461–1.

* * * * *

(g) *Effective/Applicability date.* Except as otherwise provided, this section shall apply to tax required to be withheld under chapter 3 of the Internal Revenue Code after 1966. The last sentence of paragraph (a)(1)(i) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 14.** Section 1.6414–1 is amended by:

■ 1. Adding two sentences at the end of paragraph (a)(2).

■ 2. Revising the third sentence of paragraph (b).

■ 3. Adding paragraph (d).

The additions and revision read as follows:

§ 1.6414–1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.

(a) * * *

(2) * * * With respect to the payment of withholding tax under section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4. See § 1.1446–3(d)(2)(iv) for rules regarding refunds to a withholding agent under section 1446.

(b) * * * The amount claimed as a credit may be applied, to the extent it has not been applied under § 1.1461–2(b), by the withholding agent to reduce the amount of a payment or deposit of tax required by § 1.1461–1 or § 1.6302–2(a) for any payment period occurring in the calendar year following the calendar year of overwithholding. * * *

* * * * *

(d) *Effective/Applicability date.* The last two sentences of paragraph (a) of this section shall apply to partnership taxable years beginning after April 29, 2008.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 15.** The authority for 26 CFR part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 16.** In § 301.6402–3, the second and third sentences of paragraph (e) are revised and paragraph (f) is added to read as follows:

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) * * * Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Internal Revenue Code, a copy of the Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' or other statement (see § 1.1446–3(d)(2) of this chapter) required to be provided to the beneficial owner or partner pursuant to § 1.1461–1(c)(1)(i) or § 1.1446–3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042–S, Form 8805, or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. * * *

(f) *Effective/Applicability date.* References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446–3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

■ **Par. 17.** In § 301.6722–1, paragraph (d)(3) is revised and paragraph (e) is added to read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(3) *Other items.* The term *payee statement* also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States) (generally the recipient copy of Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax.'')

(e) *Effective/Applicability date.* The reference in paragraph (d)(3) of this section to Form 8805 shall apply to partnership taxable years beginning after *April 29, 2008.*

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 18.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 19.** In § 602.101, paragraph (b) is amended by removing the entry for § 1.1446–6T from the table, adding an entry for § 1.1446–6, and revising the entries to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1446–1	1545–1934
1.1446–3	1545–1934
1.1446–4	1545–1934
1.1446–5	1545–1934
1.1446–6	1545–1934
* * * * *	

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: April 23, 2008

Eric Solomon,

Assistant Secretary of the Treasury.

[FR Doc. E8–9356 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8557–6]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, EPA is approving the request by the Forest County Potawatomi Community's (FCP Community) Tribal Council to redesignate certain portions of the FCP Community Reservation as a non-Federal Class I area under the Clean Air Act (Act or CAA) program for the Prevention of Significant Deterioration (PSD) of air quality. These regulations are designed to preserve the air quality in national parks and other areas that are meeting the National Ambient Air Quality Standards (NAAQS). The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide on the Reservation.

DATES: This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–WI–0002. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. This Facility is open from 8:30 a.m. to 4:30 p.m. Central Standard Time, Monday through Friday, excluding legal holidays. We recommend that you telephone Constantine Blathras at 312–886–0671 before visiting Region 5's office. Hard copies of these docket materials are also available in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507; telephone number: 312–886–0671; fax number: 312–886–5824; e-mail address: *blathras.constantine@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. General Information

A. Does This Action Apply to Me?

This action will apply to applicants to the PSD construction permit program on Class I trust lands of the FCP Community.

B. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of this final rule is also available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted on the EPA's New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr/actions.html*.

C. How Is This Action Organized?

The information presented in this action is organized as follows:

I. General Information
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B. Where Can I Obtain Additional Information?
C. How is this Action Organized?
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B. The Forest County Potawatomi Community Redesignation Request
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B. Lands Suitable for Redesignation
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A. Executive Order 12866: Regulatory Planning and Review
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F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VII. Statutory Authority

II. Background

A. The Clean Air Act Prevention of Significant Deterioration (PSD) Program and Class I Area Redesignations

The CAA provides a comprehensive structure for ''protect[ing] and enhanc[ing] the quality of the Nation's air resources[.]'' *See* section 101(b) of the CAA. The basis of the CAA's regulatory structure is the NAAQS, which specify the maximum permissible concentrations of certain pollutants in the ambient air. *See* section 108 and 109 of the CAA. Furthermore, Part C of Title I of the CAA provides for the prevention of significant deterioration of air quality. The PSD program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas meeting the NAAQS, i.e., ''attainment'' areas, or in areas for which there is insufficient information to classify an area as either attainment or nonattainment, i.e., ''unclassifiable'' areas. These areas are referred to as ''PSD areas.'' *See* section 165(a) of the CAA. ''Major stationary sources'' are large industrial sources which emit or have the potential to emit 250 tons per year (tpy) or more of a regulated air pollutant (100 tpy or more if the source falls in one of 28 specified categories). *See* 40 Code of Federal Regulations (CFR) section 52.21(b). The applicability of the PSD program to a particular source must be determined in advance of construction, and it is pollutant specific. To obtain a PSD permit, a major stationary source must install the ''best available control technology'' (BACT) to control emissions of regulated pollutants emitted in significant amounts. *See* section 165(a)(4) and section 169(3) of the CAA; 40 CFR 52.21(j). PSD permits also require the source to demonstrate that it will not contribute to a violation of the NAAQS or applicable PSD increments (the maximum allowable air quality deterioration allowed in a PSD area). *See* section 165(a)(3).

The CAA provides three basic classifications for PSD areas: Class I, II and III. For each classification, the PSD regulations establish the incremental amount of air quality deterioration allowed. However and in all cases, the NAAQS set the maximum allowable concentration levels of certain pollutants that may not be exceeded in a PSD area, irrespective of any increment. Increments have been established for three pollutants—Particulate Matter (PM_{10}), Sulfur Dioxide (SO_2) and Nitrogen Dioxide (NO_2)—and for a variety of averaging periods, which correspond to the averaging periods for the NAAQS for those pollutants. *See* 40 CFR 52.21(c). Class I areas include national parks greater than 6,000 acres in size, national wilderness areas greater than 5,000 acres in size and other natural areas of special concern; the smallest increments are specified for those areas. In addition, when Congress enacted the PSD program in 1977, it provided that these areas may not be redesignated to another classification. *See* section 162(a) of the CAA. Class II applies to areas in which pollutant increases accompanying moderate growth are allowed. Under the 1977 amendments to the CAA, all areas, other than the mandatory Federal Class I areas were initially designated as Class II PSD areas. However, States and Tribes have the authority to redesignate Class II areas to Class I to provide additional air quality protection and some Tribes have done so.[1] Class III applies to those areas in which more air quality deterioration is considered acceptable. States and Tribes have the authority also to redesignate Class II areas to Class III to promote development, but to date; none have chosen to do so.

The CAA directs the Secretary of the Interior, or other appropriate Federal land manager, to review other Federal lands and recommend for redesignation to Class I any appropriate areas ''where air quality related values (AQRVs) are important attributes of the area.'' *See* section 164(d) of the CAA. The Act does not define AQRVs nor identify specific AQRVs other than visibility (*See* section 165(d)(2)(B) of the Act), but in the legislative history to the Act, AQRVs are described as follows:

> The term ''air quality related values'' of Federal lands designated as Class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16

[1] These are the Northern Cheyenne Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation, and the Spokane Indian Reservation. *See* 40 CFR 52.1382(c), 52.2497(c), and 52.144(c).

U.S.C. 1), the purpose of such national park lands ''is to conserve the scenery and the natural historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

Nevertheless, Class I status is not reserved for special Federal areas alone. Section 164 of the CAA provides to States and Indian governing bodies the ultimate authority to reclassify any lands within their borders as Class I. The CAA specifies that ''a State may redesignate such areas as it deems appropriate as Class I areas.'' *See* section 164(a) of the CAA. Tribes have similar authority to redesignate ''lands within the exterior boundaries of reservations.''

The procedural requirements for a Class I redesignation by a Tribe are set out in section 164(c) of the CAA and are further defined in the implementing regulations at 40 CFR 52.21(g)(4). These provisions explain the steps a Tribe needs to follow to request redesignation of reservation lands. The EPA Administrator may disapprove a redesignation request only if the Administrator finds that the proposal did not meet the procedural requirements or was inconsistent with the CAA. *See* 42 U.S.C. 164(b)(1)(C)(2).

B. The Forest County Potawatomi Community Redesignation Request

The FCP Community is a federally recognized Indian Tribe recognized by a congressional Act of June 23, 1913 (38 Stat. 102). The 1913 Act provided that 11,786 acres of non-contiguous land purchased by the Federal government would be set aside for the purpose of making allotments to the Wisconsin Potawatomi Indians (which included the FCP Community). While the lands were purchased for making allotments, no allotments were ever made due to changes in Federal allotment policies. Thus, title to the land remained with the United States until 1988, when Congress passed legislation to place the land in trust for the FCP Community, and to recognize explicitly all of these lands as belonging to the FCP Community.[2] The majority of the FCP Community's reservation lands are located in Forest County, Wisconsin, with the remaining acreage located in six neighboring townships.

The FCP Community is downwind of key areas of industrial development. The reservation is located in the North Central Wisconsin Intra-State Air Quality Control Region #238. Land in the northern counties of this region is mostly forested. Lands south of Madison County in this region are mostly agricultural. Population and industry is concentrated southwest and west of the reservation, in the areas of Wausau, Stevens Point, Wisconsin Rapids, and Rhinelander. At present, Forest County itself has little industrial development, and the CAA's PSD minor source baseline date, which is the date on which the first complete application for a PSD permit is filed in a particular area, has not been triggered. Thus, at this time, there has been no PSD increment consumption in this area.

On February 14, 1995, the FCP Community submitted its formal request for redesignation to EPA's Region 5 office. FCP Community's redesignation request proposes to reclassify as Class I those trust parcels of 80 acres or more located in Forest County. *See* Notice of Proposed Rulemaking, 60 FR 33779 (June 29, 1995). A list of these parcels can be found in the codification section of this notice labeled Subpart YY–Wisconsin, Forest County Potawatomi Reservation (b). The FCP Community explained its reasons for requesting redesignation as follows:

> ''* * * the Forest County Potawatomi Community respects Mother Earth, and is aware of clean air as being a valuable resource that all living things depend upon to exist, and, * * * the Forest County Potawatomi Community wish to continue to strive towards self-determination, which will be strengthened by codes and land use plans that are compatible with their renewable resources and culture, and, * * * the present level of protection given to the Forest County Potawatomi air resource does not provide the level of protection the Tribe wishes to give their air, which they want to maintain as very pristine. * * *'' *See Technical Report* at 2.

The FCP Community reaffirmed these reasons in comments submitted to EPA on April 27, 2007, by citing the unique history of the reservation and FCP Community, the location of the headwaters of several wild and scenic rivers in the area, the importance of fish as a nutritional and recreational resource, the location of key wetlands in the area, the FCP Community's desire to protect and restore Devil's Lake, and the designation of portions of the area including the FCP Community Reservation and surrounding areas as eligible for listing in the National Historic Register as ''Traditional Cultural Property.'' A Traditional Cultural Property is one that meets the criteria for listing in the National Register and which has an ''association with cultural practices or beliefs of a living community,'' as rooted in that community's history and which is important because of its role in maintaining the continuing cultural identity of the community.[3]

Additionally, the FCP Community described the central importance of ''purity'' to its cultural and spiritual practices, where natural resources ''must be drawn from spiritually pure natural environments. Concern about access to these resources and the ability of the environment to provide the pure resources needed to sustain Potawatomi culture occupies the thoughts and prayers of the community.'' FCP Community member Jim Thunder, stated: ''Today we are abusing our Mother Earth. Our air, water and soil are polluted. We are told not to eat fish out of certain streams and lakes. I pray to our creator that we look back so that we may see ahead. Let us examine our lives so that we are respectful to our fellow humans and to nature. Let us respect our children and, above all, let us live our lives in accordance with our beliefs.'' [4]

Finally, the FCP Community also explains that clean air is important to the Tribal enterprises and economy of the Tribe, and to the northern Wisconsin area, where recreation and tourism are a primary component of the economic base and a key projected component of economic growth for the Tribe and for the region.[5]

III. Overview of This Final Action

EPA is taking final action on its evaluation of the FCP Community's Tribal Council request to redesignate certain portions of the FCP Reservation as a non-Federal Class I area under the CAA program for the prevention of significant deterioration of air quality. We have decided to approve this request. The Class I designation will result in lowering the allowable increases in ambient concentrations of PM, SO_2, and NO_X on the Reservation.

[2] On August 6, 1987, the Senate enacted Bill 1602 which declared that the trust lands that had been purchased pursuant to 38 Stat. 102 are ''hereby declared to be the reservation of the Forest County Potawatomi Community of Wisconsin.''

[3] Jeff Crawford, Forest County Potawatomi Attorney General, ''Comments Regarding U.S. Environmental Protection Agency's proposed Federal Implementation Plan under the Clean Air Act for Certain Trust Lands of the FCP Community if Designated as a PSD Class I Area'' [hereafter FCP 2007 Comments], April 2007, at 3–10.

[4] Id. at 10.

[5] ''Tourism in these seven counties [Forest, Oneida, Florence, Langlade, Marinette and Oconto] grew by 117% between 1994 and 2005 compared to 107% for Wisconsin as a whole [citation omitted]. In 2005 in these seven counties, the $715 million spent by tourists created some 18,005 equivalent full-time jobs and generated some $23.2 million in revenue for local governments through such means as property taxes, sales taxes, lodging taxes, and so forth [citation omitted].'' Id. at 14.

A. What We Proposed

On June 29, 1995, and July 10, 1997, EPA proposed to approve a request by the FCP Community Tribal Council to redesignate lands within the FCP Community Reservation in the State of Wisconsin to Class I under EPA's regulations for prevention of significant deterioration of air quality (60 FR 33779, 62 FR 37007). The Class I designation will result in lowering the allowable increases in ambient concentrations of PM, SO_2, and NO_X on certain of the FCP Community's lands.

On December 18, 2006, EPA proposed that it would promulgate a Federal Implementation Plan (FIP) if it approves FCP Community's request, with the FIP to be implemented by EPA unless or until it is replaced by a Tribal Implementation Plan (TIP).

B. Final Action and Differences From Proposal

In this final action, we are approving FCP's Community request to redesignate certain reservation lands to Class I status. EPA finds that the FCP Community has met the applicable procedural requirements and thus its redesignation request must be approved.

However, we are amending, based on comments received, the language proposed in the December 18, 2006, rulemaking, which had stated in pertinent part the following modification to the FIP for the PSD program in Wisconsin:

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA, except as specified in paragraph (f) of this section.

(f) Forest County Potawatomi Community reservation lands 80 acres and over in size and located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. The individual parcels listed below all consist of a description from the Fourth Principal Meridian. * * *

(8) Section 2 of T36N R13E* * *

(26) N½ of Section 22 of T35N R16E* * *

(27) SE¼ of Section 22 of T35N R16E* * *

First of all, the FCP Community noted that the draft language was not based on the current language for 40 CFR 52.2581, which provides:

(e) Regulations for the prevention of significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

EPA agrees and for that reason the current language should be the starting point to any modification of this provision.

Second, the FCP Community stated that EPA's proposed FIP language ''creates ambiguity regarding whether the requirements of 40 CFR 52.21 apply to the FCP Community's Reservation.'' [6] EPA intends that the requirements of 40 CFR 52.21 apply to the parcels redesignated as Class I, and has modified the proposed FIP language accordingly to remove the phrase ''except as specified in paragraph (f) of this section. The revised rulemaking text is as follows:

(e) Regulations for the prevention of significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

(f) Forest County Potawatomi Community Reservation.

(1) The provisions for prevention of significant deterioration of air quality at 40 CFR 52.21 are applicable to the Forest County Potawatomi Community Reservation, pursuant to § 52.21(a).

(2) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), those parcels of the Forest County Potawatomi Community's land 80 acres and over in size which are located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. For clarity, the individual parcels are listed in 40 CFR 52.2581(f)(2).

Finally, the FCP Community has commented that the three parcels, numbers 8, 26, and 27 have been incorrectly identified either in the description of lands provided in the Tribe's letter of February 24, 1998, or in EPA's list of parcels proposed for redesignation published in the December 18, 2006, proposed rulemaking. These lands are, however, correctly identified on the December 13, 1994, S. Funk map provided by the Tribe with its redesignation request. This map was specifically reviewed by the Bureau of Indian Affairs, Minneapolis District office, which certified that the lands marked for proposed redesignation are lands held in trust for the Tribe. Letter from Robert Jaeger, Superintendent, Bureau of Indian Affairs to David Kee, Director, Region 5 Air and Radiation Division on April 16, 1998. This map has been available for public notice and comment during the pendancy of this rulemaking. Accordingly, EPA has corrected the legal description of parcel numbers 8, 26, and 27 in the list of lands redesignated to Class I pursuant to today's action.

[6] FCP Comment letter, 2007, at 31.

IV. Basis for Final Action

A. Class I Redesignation Requirements

EPA is taking this action in accordance with the requirements of section 164 of the CAA. In section 164 of the Act, Congress provides States and Tribes the ultimate authority to reclassify any lands within their borders as Class I based on the following statutory and regulatory requirements:

(1) At least one public hearing must be held in accordance with procedures established in 40 CFR 51.102. *See* 40 CFR 52.21(g)(2)(i).

(2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation must be notified at least 30 days prior to the public hearing. *See* 40 CFR 52.21(g)(2)(ii).

(3) At least 30 days prior to the Tribe's public hearing, a discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public inspection. *See* 40 CFR 52.21(g)(2)(iii).

(4) Prior to the issuance of the public notice for a proposed redesignation of an area that includes Federal lands, the Tribe must provide written notice to the appropriate Federal Land Manager and afford an adequate opportunity for the Federal Land Manager to confer with the Tribe and submit written comments and recommendations. *See* 40 CFR 52.21(g)(2)(iv).

(5) The proposal to redesignate has been made after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation. *See* 40 CFR 52.21(g)(2)(v).

(6) Prior to proposing the redesignation, the Indian Governing Body must consult with the State(s) in which the Reservation is located and that border the Reservation. *See* 40 CFR 52.21(g)(4)(ii).

(7) Following completion of the procedural steps and consultation, the Tribe submits to the Administrator a proposal to redesignate the area. *See* 40 CFR 52.21(g)(4).

1. EPA's Interpretation of Section 164 of the Clean Air Act

In addition to reiterating the CAA section 164 requirements, the following discussion identifies the actions taken

by the FCP Community to fulfill those requirements and clarifies our interpretation of the requirements in light of several comments we received.

1. At least one public hearing must be held in accordance with procedures established in 40 CFR 51.102. *See* 40 CFR 52.21(g)(2)(i).

The regulations require that a public hearing on a proposed redesignation be conducted in accordance with 40 CFR 51.102, which requires the following: A minimum of 30 days notice, ''prominent advertisement'' regarding the hearing in the affected area, availability of plans; notification to the EPA Administrator, local air pollution authorities, and preparation of a record of the proceedings. *See* 40 CFR 51.102(a)–(f).

The FCP Community held a public hearing on the proposed redesignation on September 29, 1994, at the Potawatomi Tribal Hall, in Crandon, Wisconsin. The FCP Community's redesignation request included a certification that the hearings were held in compliance with applicable notice requirements, including adequate notice to appropriate local, State and Federal entities, as well as public hearing requirements. A transcript of the hearing, notices (including copies of advertisements), letter invitations, copies of comments received, a transcript of the hearing, and response to comments was included in the FCP application for redesignation. Accordingly, EPA finds that the hearing held by the FCP Community was adequate.

2. Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation must be notified at least 30 days prior to the public hearing. See 40 CFR 52.21(g)(2)(ii).

The FCP Community held its public hearing on September 29, 1994. Notices of the public hearing, as well as notification of the public comment period and copies of supporting documents, were sent to dozens of governmental entities and interest groups in a letter dated August 26, 1994. Entities noticed included EPA Region 5, the States of Wisconsin and Michigan [7] (even though the lands covered by the redesignation lie wholly within Forest County, Wisconsin), the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service; nine Wisconsin Tribal governments; nineteen counties and townships; local planning commissions in Wausau, Eau Claire, and Green Bay, Wisconsin; and, many other organizations. The FCP Community also published notices of the September 29, 1994, public hearing in four local newspapers, which ran between August 29, 1994 and September 1, 1994. Representatives from many of these governmental entities and organizations provided comments at the hearing or in writing. The FCP Community responded to these and other comments received from private individuals and commercial entities in its February 1995 ''Responses to Common Questions and Issues in Written Comments on the Proposed Forest County Potawatomi Community PSD Class I Area Redesignation,'' *Technical Report* at Appendix A. For a copy of this document, please visit the public docket of this rulemaking.

In light of the outreach, public notice, opportunity for comment, and information distributed by the FCP Community in preparation for making their request to EPA for redesignation, EPA finds that the FCP Community provided adequate opportunity for notice, comment, and consultation.

3. At least 30 days prior to the Tribe's public hearing, a discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public inspection. *See* 40 CFR 52.21(g)(2)(iii).

Section 164(b)(1)(A) of the CAA requires that a State or Tribe prepare for public comment a ''satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation.'' However, neither the CAA nor EPA regulations define ''satisfactory description and analysis,'' as that term is used in CAA section 164(b) and 40 CFR 52.21(g)(2). In construing its meaning, EPA considered Congressional intent that EPA's review of a ''description and analysis'' be deferential. In addition, EPA considered the question: ''Satisfactory to whom?'' Many commenters argued that the Tribe's request should be denied because they were unsatisfied with the level of documentation in the Tribe's application regarding economic impacts and whether the Tribe had sufficiently demonstrated that Class I redesignation would not have an adverse economic impact on surrounding areas, be they local communities, adjacent states, or states across the nation. EPA disagrees.

In enacting section 164(b), it is clear that Congress intended to entrust EPA with the authority to set a deferential standard for ''satisfactory description and analysis.'' Thus, EPA stated in its final rule on the Yavapai Apache Class I redesignation that: ''[The use of the word ''satisfactory''] in the statute and implementing regulations suggests a relatively low threshold. Congress did not dictate that the analysis be comprehensive or exhaustive. Further, the statutory language does not assign any specific weight to the consideration of health, environmental economic, social or energy effects, or suggest that one consideration should be given priority over another. * * * *See* ''Arizona Redesignation of the Yavapai Apache Reservation to a PSD Class I Area,'' 61 FR 56461–56464 (November 1, 1996).

Therefore, there is no requirement that a State or Tribe conduct a balancing test of the costs and benefits of a redesignation request, nor that the various factors to be considered in its analysis need to be balanced against one another. EPA has taken the position that the fact that no weight or priority is assigned to any particular factor, taken together with the broad redesignation discretion conferred on States and Tribes, indicates that the Tribe does not have to justify or overcome a balancing test in its redesignation request or show that a proposed redesignation will have no impact on the surrounding community.

Legal precedent clearly supports EPA's interpretation. In *Nance* v. *EPA,* 645 F.2d 701 (9th Cir. 1981), petitioners claimed that the Northern Cheyenne Tribe's analysis was inadequate in several respects. However, the Ninth circuit court rejected the claim that the Tribe was required to meet exacting analysis requirements and held that the Tribe had considered the factors identified in EPA's regulations. *Nance* v. *EPA,* 645 F.2d at 712. EPA's decision in this case was upheld under the far more exacting pre-1977 regulatory regime that expressly provided for an analysis that included consideration of growth anticipated, regional impacts, and social, environmental and economic effects as well as stricter EPA scrutiny of the analysis.

Moreover, the court found that the Tribe's decision was supported and strengthened by the policy for maintaining clean air embodied in the CAA:

> [T]he Clean Air Act contains a strong presumption in favor of the maintenance of clean air, and the nature of a decision which simply requires that the air quality be maintained at a certain level prevents any exact prediction of its consequences. The Tribe has considered the factors enumerated in EPA regulations, and its choice in favor of the certainty of clean air is a choice

[7] EPA examined correspondence between the Tribe and the State of Michigan and confirmed that the State received timely notification of the public hearing.

supported by the preferences embodied in the Clean Air Act.

Nance v. *EPA,* 645 F.2d at 712.

In another case regarding the approval of a redesignation request, in this case for the Yavapai Apache Tribe (*See Administrator, State of Arizona* v. *EPA,* 151 F.3d at 1211, 9th Cir. 1998, hereafter *Arizona* v. *EPA*), the Ninth Circuit also deferred to EPA's conclusion that the existing statutory requirement of a ''satisfactory description and analysis'' is a relatively low threshold. The court explained that the 1977 CAA amendments to the PSD provisions, which are still in the statute, changed previous law by eliminating EPA's previous authority to override a classification by a local government on the basis that the local government did not properly weigh energy, environment, and other factors. *Arizona* v. *EPA* at 151 F.3d at 1211 (citing legislative history). Moreover, EPA's role in reviewing redesignation requests is so limited it cannot disapprove a request unless it finds that the redesignation ''does not meet the procedural requirements'' of the Act, CAA Section 164(b)(2); this statutory limitation provides no support for the commenters' suggestion that EPA has broad authority to review the quality of the ''description and analysis'' much less to disapprove a redesignation unless the description and analysis are ''satisfactory.''

For those reasons, EPA finds that the FCP Community met the statutory requirement to provide a ''satisfactory description and analysis.'' Nevertheless, many commenters argued that the Tribe's request should be denied because they were unsatisfied with the level of documentation in the Tribe's application regarding economic impacts and whether the Tribe had sufficiently demonstrated that Class I redesignation would not have an adverse economic impact on surrounding areas, be they local communities, adjacent states, or states across the nation.[8]

As discussed previously, neither the CAA nor its implementing regulations require a State or Tribe to assess the impact of a proposed redesignation on areas outside the lands proposed for redesignation, nor to demonstrate that a request for redesignation would not impact these areas. Nevertheless, the FCP Community's application for redesignation contained information to show that the Tribe had examined the existing economy of the region and analyzed the potential impact of Class I redesignation on the existing and future projected economic growth in the region, concluding that ''The development of large industrial projects will very likely be effected [sic] more by economic viability, external market conditions, and other existing local environmental and land use restrictions than by the Class I redesignation.'' [9]

Furthermore, supplemental information submitted by the FCP Community in June 1995, contained an additional analysis showing that the anticipated (at that time) PSD caliber sources planning to construct or expand, as well as projected area economic growth, would not be adversely impacted by the proposed Class I area. The analysis concluded that ''*Class I redesignation will not effect the operations of any existing industry* because the PSD program only effects the development of new air pollutant sources.'' Therefore, the *Technical Report* concluded, ''The redesignation will not result in the loss of any existing jobs, nor in the ''downsizing'' or closing of any existing businesses. It will only require major new development projects to analyze the effects of and control the emission of air pollutants, so that the existing air quality remains clean [emphasis in original].'' [10]

Moreover, the Tribe prepared a *Technical Report* and released it for public comment in advance of its public hearing. This *Technical Report* examines the environmental, health, economic, social and energy effects of the proposed redesignation both on and off FCP Community reservation lands. The analysis includes a survey of present conditions and presents projected impacts of redesignation on health, employment, and natural resources, including the project impacts to aquatic, forest and wetlands ecosystems; and to fish and wildlife populations. The FCP Community's *Technical Report* also provides a discussion of the projected effects of redesignating the FCP Community Reservation lands to Class I and the effects of remaining Class II.

Additionally, although there is no statutory obligation to identify AQRVs prior to seeking redesignation, the FCP Community's *Technical Report* and a supplementary support document dated June 14, 1995, provide the FCP Community's analysis of potential impacts of the two AQRVs identified (mercury deposition and acid rain) in the context of the health, environmental, energy, economic, and social factors analysis, both for lands subject to the redesignation request, and those located outside the proposed area. The *Technical Report* notes in several instances that adverse impacts on AQRVs, which occur at concentrations lower than Class I increments, might pose an additional restriction on the sitting of large projects.

In conclusion, upon review of the documentation submitted by the FCP Community, EPA finds that the FCP Community has fully met the requirement in CAA section 164(b)(1)(A) and 40 CFR 52.21(g)(2)(iii) to provide a ''satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation.''

4. Prior to the issuance of the public notice for a proposed redesignation of an area that includes Federal lands, the Tribe must provide written notice to the appropriate Federal Land Manager (FLM) and afford an adequate opportunity for the FLM to confer with the Tribe and submit written comments and recommendations. *See* 40 CFR 52.21(g)(2)(iv).

In addition to consultation undertaken by the FCP Community with Federal, State, and local agencies, the FCP Community consulted directly with the Bureau of Indian Affairs (BIA) regarding FLM responsibilities. After those consultations, the BIA informed the FCP Community of that Agency's support of the Class I redesignation request and that Agency's view that the Tribe would be the appropriate land manager for the lands subject to the redesignation request.[11] EPA finds, accordingly, that the Tribe has satisfied this requirement.

5. The proposal to redesignate has been made after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation. *See* 40 CFR 52.21)(g)(2)(v).

The lands covered by the proposed redesignation lie wholly within Forest County, Wisconsin, and are comprised wholly of reservation lands held in federal trust. The CAA requires notice to governmental entities ''in the area covered by the proposed redesignation.'' *See* 52.21(g)(2)(v) (emphasis added). There is no requirement, however, for a finding on what areas may be affected

[8] FCP 2007 Comments, at 15.

[9] *Technical Report,* included in Application, at 56.

[10] *Technical Report* at 55. Supplemental information submitted by the FCP Community in its 2007 comments on the proposed FIP provided additional information to show that economic development did not slow or decrease near Class I areas.

[11] Letter from Acting Superintendent Robert C. Ford, Great Lakes Agency, Bureau of Indian Affairs, U.S. Department of Interior, to Al Milham, Chairman, February 15, 1994.

by a proposed redesignation or notice to such governments in such areas. As discussed in Section IV.A.1–2, the FCP Community's application contains a list of dozens of federal, state and local governmental offices which were notified of the Tribe's intended action. Additionally, the FCP Community developed a fact sheet and held a consultation session with federal, state, and local governmental representatives to further explain and hear concerns regarding the proposed action, besides the required public hearing. Further, the FCP Community received numerous comments on its proposed action, to which it prepared a response to comments document. Thus, and even while the regulation does not provide a standard for ''consultation,'' EPA deems the actions of the FCP Community to have provided sufficient notice and opportunity for comment.

6. Prior to proposing the redesignation, the Indian Governing Body must consult with the State(s) in which the Reservation is located and that border the Reservation. *See* 40 CFR 52.21(g)(4)(ii).

The FCP Community's reservation is located wholly within the State of Wisconsin. For that reason, the FCP Community included several Wisconsin offices and agencies in its notice on the proposed redesignation and public hearing, as discussed in section IV.A.1–2 above. Nevertheless, the FCP Community also provided notice of its intent to redesignate to several divisions of the Michigan Department of Environmental Quality, although the State of Michigan does not border the reservation. Both Wisconsin and Michigan provided comments on the proposed redesignation, to which the Tribe responded in its response to comments document. Thus, EPA finds that the FCP Community's consultation efforts comply with the requirement to consult with States.

7. Following completion of the procedural requirements, the Tribe submits to the Administrator a proposal to redesignate the area. *See* 40 CFR 52.21(g)(4).

On December 4, 1993, and by majority vote, the FCP Community General Council and the tribal governing body of the FCP Community passed a resolution to request the Administrator to redesignate the FCP Community Reservation and on February 10, 1995, the FCP Community General Council passed a resolution to submit its completed redesignation request package to EPA. The FCP Community submitted its formal request for redesignation to EPA's Region 5 office on February 14, 1995.

EPA reviewed the FCP Community's request and made a preliminary determination that the request met the applicable procedural requirements of 40 CFR 52.21(g)(4). After making this preliminary determination, EPA published a notice of proposed rulemaking in the **Federal Register** proposing to approve the request and announced a 120-day public comment period on the issue of whether the Tribe had met the procedural requirements. *See* Notice of Proposed Rulemaking, 60 FR 33779 (June 29, 1995).

However, on June 8, 1995, the Governors of Wisconsin and Michigan sent a letter to EPA objecting to EPA's proposal to grant the FCP Community request for redesignation and requested EPA to intervene. The letter also requested that EPA not finalize the proposed redesignation until further regulations were in place to address permitting on non-Federal Class I areas. On August 7, 1995, EPA published a notice cancelling the August 2, 1995, hearing and indefinitely extending the public comment period because the Governors of Wisconsin and Michigan had requested negotiations pursuant to Section 164(e) of the CAA to resolve their dispute regarding the proposed Class I request. In response to the States' requests, EPA suspended the rulemaking to address the States' concerns. *See* 60 FR 40139 (August 7, 1995).

In 1997, EPA published an advanced notice of proposed rulemaking to address PSD permitting in non-Federal Class I areas. 62 FR 27158 (May 16, 1997). Additionally, two public workshops were held to gather comments on the advanced proposal. 62 FR 33786 (June 23, 1997). EPA also initiated a dispute resolution process for Michigan and Wisconsin, but after 2 years of discussions, the parties had failed to reach an agreement.

Accordingly, EPA published a notice scheduling two public hearings on the proposed redesignation and setting the closing date of the public comment period for September 15, 1997. 62 FR 37007 (July 10, 1997). EPA held two public hearings on the proposed redesignation, the first on August 12, 1997, in Carter, Wisconsin, and the second on August 13, 1997, in Rhinelander, Wisconsin, with an informational meeting preceding each hearing. EPA also provided numerous opportunities for input from local governments in EPA's public notice and hearing process on the proposed rulemaking for the redesignation.

The redesignation proposal elicited numerous comments from state governments, local governments and the general public. Responses to these comments are found in the response to comments document, which is part of the record for this rulemaking. However, major comments are summarized in this notice.

B. Lands Suitable for Redesignation

Section 164(c) of the CAA provides that ''Lands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated. * * *'' 42 U.S.C. 7474(c). The PSD regulations define ''Indian Reservation'' as ''any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.'' *See* 40 CFR 52.21(b)(27). The FCP Community's reservation lands are comprised of non-contiguous trust parcels comprising a total area in excess of 11,700 acres, as described in Section II.B. The FCP Community's trust holdings are primarily located in Forest County, with other parcels located in surrounding townships. In its redesignation request, the FCP Community included only those parcels of 80 acres or greater in size and located within Forest County.

Several commenters raised concerns that the area proposed for redesignation includes lands that are not within the boundaries of the FCP Indian reservation. To address these concerns, EPA sought further information from both the FCP Community and the Bureau of Indian Affairs (BIA) regarding the status of lands proposed by the FCP Community for redesignation. By letter of February 24, 1998, the FCP Community provided documents describing the parcels subject to the proposed redesignation. EPA subsequently requested an opinion from the U.S. Department of Interior (DOI) on the status of those lands, and, DOI's BIA stated as follows:

> The map compiled by S. Funk and dated 12/13/94 was used for determination purposes. All of those lands identified on that map as tribal trust meet the criteria of Section 164(c) of the CAA as so stated. The parcels noted as tribal trust have all been designated reservation land by proclamation of the Assistant Secretary.[12]

The BIA certification is available for inspection at the public docket for this rulemaking.

However, the FCP Community commented that the list of parcels subject to the Class I redesignation request contained errors when compared to the S. Funk map. These

[12] Letter from Robert Jaeger, Superintendent, BIA Great Lakes Agency, to David Kee, Air and Radiation Division, USEPA Region 5, April 16, 1998.

errors have been corrected in this action. *See* Section III.B. EPA's action redesignates to Class I only those lands from FCP Community's original list which have been confirmed to be held in trust for the FCP Community and, therefore, are part of FCP Community's Reservation.

Several commenters, including the FCP Community, also expressed their belief or concern that lands acquired by a Tribe or State subsequent to this redesignation request would automatically become part of the Class I area without having to follow the redesignation process in 40 CFR 52.21(g). However, EPA believes that a State or Tribe is required to submit a new redesignation request and follow all of the procedural steps to redesignate additional parcels not covered by a previous request where, as here, a Tribe has requested redesignation of specified parcels, and not its entire reservation. In addition, EPA would be required to follow the public notice and comment procedures set out by Congress in section 164(b)(2) of the CAA to review the new request prior to making its determination whether to grant the request. Therefore, any additional lands which are placed into trust for the FCP Community would require the FCP Community to submit a new redesignation request.

Some commenters also alleged that the areas proposed for redesignation were either too small or too dispersed to allow for effective air quality management as discussed in sections 162 and 164 of the CAA. EPA disagrees. As explained in the notice that resolves the dispute resolution with the State of Michigan and that is published concurrently with this final action in this **Federal Register**, EPA can only consider the size of an area proposed for redesignation when resolving a dispute under CAA section 164(e). Michigan raised such a dispute and EPA is resolving it in a separate notice. For reasons explained there, EPA concluded that the size of the areas requested for redesignation provides no basis for disapproval.

C. EPA's Role in Evaluating Class I Redesignations

Several commenters asserted that EPA's consideration of a redesignation request should not be limited to whether a Tribe or State has met the procedural requirements, but rather, that EPA should also consider the substantive basis of the request, examine tribal jurisdiction, and interject its judgment as to whether the Tribe or State redesignation request is warranted by considering such factors as the potential economic impact of the redesignation. EPA disagrees. These comments urge that EPA should, to varying degrees, exceed the congressional imposed limits on EPA's review authority and suggest imposing requirements on a Tribe's redesignation request that go far beyond what the CAA provides.

EPA began administering a PSD program in 1974, before Congress promulgated statutory provisions for the PSD program in the Clean Air Act Amendments of 1977, Public Law 95–95, 91 Stat. 685 (1977 Amendments). In its early CAA implementing regulations, EPA played an active role in the review and approval of redesignation requests. *See* 39 FR 42510, 42515 (Dec. 5, 1974). Among other things, EPA's pre-1977 regulations authorized it to disapprove a redesignation request if a State had ''arbitrarily and capriciously disregarded'' anticipated growth, or the social, environmental, and economic impact of redesignation on surrounding areas. *See* 40 CFR 52.21(c)(3)(vi)(a)(1975); 40 CFR 52.21(c)(3)(ii)(d)(1975).

However, in the 1977 CAA Amendments, Congress minimized EPA's authority to disapprove redesignation requests. Specifically, in section 164(b)(2), Congress limited EPA's authority to disapprove a redesignation ''only if [EPA] finds, after notice and opportunity for public hearing,'' that *the applicable ''procedural requirements'' of section 164 have not been met.* 42 U.S.C. 7474(b)(2) [emphasis added]. By this language, Congress clearly intended to limit EPA's role to ensuring that a State or Tribe adheres to the procedural requirements of section 164(b)(2). As the House Report accompanying the 1977 Amendments stated:

> The intended purpose of [the congressional PSD program is] * * * to delete the [preexisting] EPA regulations and to substitute a system which gives a greater role to the States and local governments and which restricts the Federal Government. * * * [b]y eliminating the authority which the Administrator has under current EPA regulations to override a State's classification of an area on the ground that the State improperly weighed energy, environment, and other factors.

EPA honored this directive when it revised its PSD regulations following the 1977 CAA Amendments. *See* 42 FR 57479–57480 (Nov. 3, 1977) and thus EPA ''will no longer be able to base a disapproval of a proposed redesignation on a finding that the State decision was arbitrary or capricious.'' Furthermore, although this language refers to States, the CAA and legislative history make clear that the discussion applies equally to tribal redesignations. *See also Arizona* v. *EPA*.

Thus, Congress has limited EPA's review of a proposed redesignation. Under section 164(c)(2) of the CAA, EPA's role is to determine whether the requesting State or Tribe followed specific procedural requirements, and to ensure that the local decision making process provides ample opportunity for interested parties to express their views. It is inappropriate for EPA to interpose superseding Federal views on the merits of the resulting State or Tribal decisions, so long as procedural rigor is assured. Thus, in the case of the FCP Community's redesignation request, EPA's review of the redesignation proposal is limited to ensuring that the FCP Community followed the prescribed statutory requirements. See Section IV.A. For those reasons, EPA concludes that comments regarding the possible economic impact of the redesignation or the merits of the Tribe's request do not provide any basis for EPA to disapprove the redesignation.

D. Impact of Dispute Resolution on Redesignation

Section 164(e) of the CAA and 40 CFR 52.21(t) provide the current statutory and regulatory framework for resolving disputes between States and Tribes arising from the redesignation of an area. Section 164(e) provides that if the Governor of an affected State or the appropriate Indian Governing Body of an affected Tribe disagrees with a request for redesignation by either party, then the governor or Indian ruling body may request that EPA negotiate with the parties to resolve the dispute. Pursuant to the statute and implementing regulations, EPA is not a party to the dispute. The Administrator of EPA is by statute designated as the final arbiter of the dispute.

The statute provides that either party can ask the Administrator for a recommendation to resolve the dispute, and if the parties fail to reach an agreement during the negotiations, ''the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.'' *See* section 164(e). The statute further provides that, ''In resolving such disputes relating to area redesignation, the administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.'' Section 164(e).

As previously noted in Section IV.C, section 164(b)(2) of the CAA provides a general rule which allows EPA to disapprove a redesignation request ''only if [it] finds, after notice and opportunity for public hearing,'' that applicable ''procedural requirements'' of the section are unmet. Section 164(e) of the CAA creates a limited exception to this general rule and requires EPA to consider additional factors where a State or Tribe requests that EPA enter into negotiations to resolve a State-Tribal dispute.

Section 164(e) mandates that when EPA resolves a dispute, it must ''consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such area.'' But where the parties reach agreement, the agreement becomes part of the applicable plan and the dispute is ended. Similarly, where EPA resolves a dispute in favor of the party requesting redesignation, dispute resolution is also terminated, and the only remaining question is whether the Tribe met the requirements of section 164(b)(2). EPA explained its role in the dispute resolution process as follows:

> When the dispute resolution process in section 164(e) is invoked by an affected state or Tribe, EPA is called upon to participate in that process and to recommend a resolution, if requested by the parties, or to finally resolve the dispute, if the parties are unable to reach agreement. However, where the parties successfully reach agreement through the dispute resolution process, EPA is inclined to read section 164(e) of the CAA to provide that EPA has no further role to play in the dispute resolution process.

71 FR 75696.

EPA received letters from the Governors of Michigan and Wisconsin, dated June 8, 1995, requesting that EPA initiate dispute resolution. Between June 1995 and July 1999, in two separate rounds of dispute resolution proceedings, the parties utilized a professional mediation service, under contract to EPA, to mediate the separate disputes between Wisconsin and the FCP Community, and between Michigan and the FCP Community.

EPA has determined that no issues raised during either dispute resolution process would provide a basis on which EPA would deny the FCP Community's request for redesignation. For this reason, EPA is treating its resolution of the disputes invoked by the States of Wisconsin and Michigan under section 164(e) of the CAA separately from its approval of the redesignation request, and is publishing them separately, but at the same time as this final action. EPA provides a complete discussion of the resolution of the intergovernmental disputes in these two separate **Federal Register** notices.

E. Appropriate Mechanism for Codifying Class I Area

1. Role of Federal Implementation Plans (FIP)

As noted in section IV.A, Section 164 of the CAA affords States and Tribes the right to request that EPA redesignate lands under their control. If all procedural requirements are met, EPA must approve this request. However, several commenters asserted that EPA has no authority to implement the redesignation by any mechanism but a TIP. EPA disagrees.

Before the FCP Community submitted this request for redesignation from Class II to Class I the Yavapai Apache Tribe of Arizona submitted such a request, and on October 2, 1996, EPA approved the request. The State of Arizona, within which the Yavapai Apache lands were located, had raised objections to the redesignation and requested to enter into section 164(e) dispute negotiations with the Yavapai Apache. The EPA held a meeting with the parties, but ultimately no agreement was reached. The EPA was forced to resolve the dispute, and did so by granting the redesignation request and codifying the redesignation in a FIP. 61 FR 56461 (November 1, 1996) and 61 FR 56450 (November 1, 1996). The State of Arizona continued to dispute the approval of the reservation to Class I and filed a suit before the United States Court of Appeals for the Ninth Circuit. *See Arizona* v. *EPA*. The Ninth Circuit's decision stated, among other things, that EPA had not abused its discretion by approving the Tribe's redesignation request but that EPA should have codified the Class I area in a TIP rather than a FIP, and remanded the redesignation back to the EPA regional office so that EPA could follow the appropriate procedures for promulgating the Class I area as a TIP.

On February 12, 1998, however, EPA promulgated a final rule under section 301 of the CAA entitled ''Indian Tribes: Air Quality Planning and Management.'' 63 FR 7254 (Feb. 12, 1998). This rule, generally referred to as the ''Tribal Authority Rule'' or ''TAR,'' discusses those provisions of the CAA for which it is appropriate to treat Indian Tribes in the same manner as States and establishes the requirements that Indian Tribes must meet if they choose to seek such treatment. The EPA also concluded with this rule that certain provisions of the CAA should not be applied to Tribes in exactly the same manner in which they were applied to States. One of those provisions was CAA 110(c)(1), which provides the Administrator with the authority to promulgate a FIP within 2 years of finding that a State plan is insufficient. 63 FR at 7265. EPA reasoned that Tribes, unlike states, ''in general are in the early stages of developing air planning and implementation expertise'' because the specific authority for Tribes to establish air programs was first expressly addressed in 1990. Id. at 7264–7265. Because Tribes were only recent participants in the process, EPA determined it would be inappropriate to hold them to the same deadlines and Federal oversight as the states. Id. at 7265. The EPA noted, however, that it was ''not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country.'' Id. The EPA concluded that the Agency could ''act to protect the air quality pursuant to its 'gap-filling' authority under the CAA as a whole'' and that ''section 301(d)(4) provides EPA with discretionary authority, in cases where it has determined that treatment of Tribes as identical to states is 'inappropriate or administratively infeasible,' to provide for direct administration through other regulatory means.'' Id.

Under that authority, EPA adopted 40 CFR 49.11, which established the framework for adoption of FIP provisions for Indian Country: ''[The Administrator] [s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of section 304(a) (sic 301(a)) and 301(d)(4), if a Tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.'' 40 CFR 49.11(a). The intent of this provision was to recognize that Tribes may not initially have the capability to implement their own delegated CAA programs and that the TAR does not relieve EPA of its general obligation under the CAA to protect air quality throughout the nation, including in Indian country. *See* 63 FR 7265. Therefore, the TAR established two possible routes for the codification of a Class I redesignation on Tribal lands: (1) A TIP, if one has been developed by the Tribe and approved by EPA; and (2) A FIP, if a TIP did not exist and a FIP was necessary to protect air quality.

For that reason, and consistent with the approach detailed in the TAR, the

FCP Community sent a letter to Francis X. Lyons, Regional Administrator of EPA Region 5, requesting that EPA promulgate the requested redesignation of the proposed Class I area parcels in a FIP, as opposed to utilizing a TIP, because the FCP Community was continuing to build its capacity and infrastructure to run its air program and was not yet ready to submit its own TIP. On August 23, 1999, EPA sent a letter to the FCP Community agreeing that a FIP would be an appropriate option for implementing the Class I area should EPA grant the FCP Community's request. On December 18, 2006, EPA published a supplemental proposal seeking comment on the proposed codification of the FCP Community redesignation in a FIP. 71 FR 75694 (December 18, 2006). In that proposal, EPA expressed its view that, consistent with the TAR, until such time as the FCP Community develops a TIP and has it approved, EPA retains the authority to promulgate the redesignation approval in a FIP.

The PSD program is implemented in Wisconsin under an EPA approved SIP which excludes all of Indian country within the State. In the December 18, 2006 proposal, EPA explained:

> Wisconsin initially implemented the Federal PSD program under a delegation of authority from EPA. Wisconsin subsequently submitted a PSD rule and program which EPA approved for all sources in Wisconsin except for sources located in tribal lands and other sources that require permits issued by the EPA. *See* 64 FR 28748 (May 27, 1999). The current EPA regulations addressing the PSD program in Wisconsin are found at 40 CFR 52.2581.

71 FR 75694, 75698. Therefore, EPA's December 18, 2006, proposal to codify the Forest County Potawatomi Class I area is an amendment to an existing FIP for Wisconsin Indian country, rather than the promulgation of a new FIP.

For those reasons, EPA does not agree with any suggestion that promulgation of a FIP cannot be the mechanism for implementing a redesignation of tribal lands as Class I. As discussed previously in this section, the FCP Community has formally requested that EPA approve its request to redesignate certain reservation lands and has demonstrated that it has met the necessary procedural requirements. EPA's promulgation of a FIP, at the Tribe's express request because it is not yet ready to develop its own TIP, does not supplant the Indian governing body's role in making the decision to request EPA approval of the redesignation.

However, another commenter also argues that use of a FIP is inappropriate because section 164(c) of the CAA states that only the appropriate Indian governing body may redesignate reservation lands, which, the commenter suggests, leaves no role for EPA. The commenter is mistaken. Section 164 of the CAA sets out the requirements for non-federal land redesignations and clearly specifies that the decision to redesignate will be made by the appropriate State or Indian governing body following certain procedural steps, discussed in Section IV.A, and that EPA makes the decision whether to approve the redesignation. The Tribe has requested the redesignation and EPA has approved it. That is fully consistent with CAA section 164(b)(2).

Furthermore, one State commenter asserts that a FIP is inappropriate in this case because it is not needed to protect the air quality of the lands proposed for redesignation because these lands are already protected as Class II areas under the CAA. EPA does not agree. As the FCP Community's request for redesignation makes clear, the FCP Community is seeking greater protection for these lands than is presently provided under their Class II classification. Section 164(c) of the CAA provides that States and Tribes may redesignate lands of their choosing where they meet the procedural requirements for redesignation. Moreover, this State commenter argues that a FIP is inappropriate because the TAR rule addresses only ''tribal air quality programs'' and Class I redesignation is not such a program. EPA disagrees that the use of a FIP is inappropriate for implementation of anything except a tribal air quality program. As discussed at the beginning of this section, 40 CFR 49.11 states in pertinent part that ''[The Administrator] [s]hall promulgate without unreasonable delay such Federal implementation plan provisions *as are necessary or appropriate to protect air quality* * * * if a Tribe does not submit a tribal implementation plan. * * *'' (emphasis added). Where, as here, the FCP Community has declined to submit a TIP, a FIP is an appropriate mechanism to protect the air quality of the redesignated Class I lands.

2. Contents of Implementation Plan

Both Wisconsin and Michigan objected to the proposed redesignation and requested dispute resolution under section 164(e) of the CAA. To resolve the dispute with the State of Wisconsin, the FCP Community and Wisconsin entered into a Memorandum of Agreement (FCP Community—Wisconsin MOA) for implementation of the proposed Class I area in Wisconsin. The terms of the agreement are not appropriate for inclusion into the FIP, however, because they do not apply to the effects of the Class I Redesignation. Rather, the agreement establishes certain special provisions regarding the effects of the Class I redesignation on potential sources outside the redesignated area. Those provisions have been summarized by EPA as follows:

> [T]he agreement between the FCP Community and Wisconsin subjects all major sources in Wisconsin located within a ten (10) mile radius of any redesignated Tribal land to performing an increment analysis and to meeting consumption requirements applicable to a Class I area. Major sources located outside of ten (10) miles are subject to increment analysis and consumption requirements applicable to any redesignated Tribal land as if it were a Class II area. Also under the agreement, all major sources within sixty-two (62) miles are subject to an analysis of their impact on air quality related values (AQRVs) of the redesignated Tribal lands to determine if they will have an adverse impact on these AQRVs.

71 FR 75696. As these special provisions differ from Wisconsin's currently approved SIP for the PSD program, for this portion of the FCP Community—Wisconsin MOA to become enforceable will require revision of the Wisconsin SIP, which otherwise would not recognize a limitation of the area in which the Class I increment analysis must be conducted.

EPA takes the position that it generally will not interfere with the agreements reached between Tribes and States through the CAA's 164(e) dispute resolution process. However, to the extent that the agreement reached under the terms of the MOA allows for restricting the requirements normally associated with Class I areas as these apply to sources located outside a 10-mile radius of the redesignated reservation lands, EPA takes the position that a revision of the Wisconsin SIP will be necessary to apply this provision to potential sources located outside the boundaries of the redesignated parcels. Therefore, EPA disagrees with the State commenter who argued that a SIP cannot be used in conjunction with any aspect of a Class I rulemaking.

EPA received several comments on language to be used in the implementation plan. The FCP Community has stated that EPA has used out of date language in the proposed FIP and therefore any FIP should use the current language for 40 CFR 52.2581. EPA agrees, and this change is noted in Section III.B. The FCP Community also states that EPA's

proposed FIP leaves ambiguous whether the provisions of 40 CFR 52.21 would apply to the redesignated FCP Community Reservation Class I land. EPA agrees and has modified the FIP to make clear that the provisions of the PSD program apply to the redesignated reservation lands. This change is also noted in Section III.B.

F. Air Program Implementation in Indian Country/Role of Tribes in Protecting Air Quality

Several commenters argued that EPA should deny the FCP Community's request because if this request is granted, then other Tribes will be encouraged to seek Class I redesignation and could eventually result in a nationwide blanket of Class I areas. EPA disagrees. Any redesignation request, by either a State or Tribe will have to consider the area of impact in its technical analysis supporting the redesignation request. Furthermore, the CAA does not require a State or Tribe to project potential future redesignations or speculate about their potential, and does not allow EPA to consider the likelihood of future redesignations as a basis for a disapproval under CAA section 164(b)(2). Any future proposed redesignation will be reviewed on a fact-specific basis according to the applicable regulations.

Other commenters expressed their view that because State air programs already address air quality, there is no need for a Tribe to implement its own air program, and, additionally, tribal air programs will unfairly burden existing state air programs by duplicating or adding to existing state requirements. EPA disagrees.

EPA's authorization of State air programs does not extend to federally recognized Indian reservations, which are excluded from State SIP approvals. CAA section 164(c) expressly provides that Tribes are responsible for redesignating reservations, and that Tribes can redesignate their lands when they conclude that the redesignation is appropriate to protect Reservation air quality. *See* TAR, 63 FR 7254, at 7254. It is Congress, through the CAA, that has provided Tribes (and States) with the authority to redesignate certain lands and to implement programs under CAA authorities.

The CAA states that ''air pollution prevention * * * and air pollution control at the source is the primary responsibility of States and local governments * * *'' and that ''each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State. * * *'' 42 U.S.C. 7401(a)(3) and 7407(a). States, however, are not the exclusive regulating entity under the CAA.

In the 1990 amendments to the CAA, Congress amended the CAA to add sections 110(o) and 301(d), which allow Tribes to administer many CAA programs in the same manner as States. *See* 59 FR 43956. EPA furthered this congressional purpose when it promulgated regulations for implementation of CAA programs by Tribes. *See* 63 FR 7254 (February 12, 1998). These amendments reflect Congressional recognition that Tribes should be primarily responsible for environmental regulations and decisions that impact reservation environments.

Nevertheless, redesignation of the FCP Community lands to Class I will not require the Tribe to develop any air quality regulations. Because northeastern Wisconsin is a designated Class II area and is an attainment area, PSD requirements already apply to sources there. The regulations currently in place under Wisconsin's PSD program already require the owner/operator of proposed major stationary sources locating in PSD areas to submit a permit application containing an analysis of their air quality impacts and to install ''best available control technology'' to control emissions. *See* sections 165(a) and 169(3) of the CAA. The air quality analysis must show that the proposed source will not cause or contribute to a violation of an applicable PSD increment or a NAAQS, as demonstrated by air quality modeling. *See* 40 CFR 52.21(c) and (d). After notice and public hearing for a proposed permit, the permitting authority reviews the permit application and determines whether the PSD permit requirements have been met.

Thus following this rulemaking granting Class I status to FCP Community reservation lands, the States of Wisconsin and Michigan will remain, for their respective lands, the permitting authorities for sources located outside the FPC Community reservation. EPA will remain the federal permitting authority for proposed sources locating within the FCP Community reservation boundaries until the FCP Community applies for and receives delegation of this authority. Until Wisconsin amends its SIP to specify how the redesignation of the Reservation as a Class I area will affect sources in Wisconsin, such sources will treat the Reservation identically to the way they would treat any other Class I area. Sources in Michigan will treat the Reservation as a Class I area as they would any other Class I area under the FIP that currently applies to Michigan, and which will not be altered by this action.

G. Air Quality Related Values of Redesignated Lands

Commenters challenged the redesignation on the basis that the Reservation does not have appropriate air quality related values. EPA, however, does not believe those comments provide any basis for rejecting the redesignation request. Neither Section 164(b) of the CAA nor EPA's implementing regulations governing redesignation require a State or Tribe requesting a redesignation to demonstrate or establish that the affected lands have AQRVs, and Congress did not make AQRVs a prerequisite for redesignation of non-federal Class I areas. It is therefore unnecessary for EPA to determine what AQRVs the lands at issue might possess in order for the Agency to act on, including granting, the redesignation request. *See* 61 FR 56450, 56458–56459 (Nov. 1, 1996) (redesignation of Yavapai-Apache lands). While States and Tribes ''may redesignate such [other] areas [within their jurisdiction] as [they] deem[] appropriate'', there is no requirement that states or Tribes identify AQRVs before proposing to redesignate an eligible area. *See* CAA section 164(a), 40 CFR 52.21(g)(4).

H. Impact of Class I Redesignation on Minor Sources

Some commenters argue against the redesignation because they believe that the economic impact of Class I redesignation would affect residential, agricultural, and small businesses and small business growth in the area or the State of Wisconsin. EPA disagrees with this comment. Analyses included in the FCP Community's *Technical Report* show that only large stationary sources proposing to locate in close proximity to the Reservation lands would be affected by the redesignation and regardless of whether they are in a Class II or a Class I area, such major sources are already required to obtain an air quality permit, conduct modeling analyses, and use the best available technology to control emissions under the PSD program. In terms of other businesses, the redesignation will not affect mobile emission sources such as cars because no vehicle inspection and maintenance (smog-check) programs would be required. In addition, redesignation would not limit the home use of wood-burning stoves, nor would it create restrictions on controlled forest burning, or require dirt roads to be paved to reduce dust and particulates. Thus,

home and small business owners in nearby communities should not be affected by a Class I designation of Reservation lands. Furthermore and as explained in Section IV.C, economic impacts, including impacts on minor sources, are not within the scope of EPA's review when evaluating a redesignation request.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

However, as part of its application package for Class I redesignation, the FCP Community prepared an analysis of the potential costs and benefits associated with this action on the affected region (Forest County and those counties bordering Forest County). This analysis directly supports a finding that the impact of the proposed redesignation would not result in an adverse annual impact to the economy of $100 million or more. *See* ''EPA memorandum dated October 25, 2004'' in the public docket for this action.

As discussed in greater detail in the memorandum, the FCP Community analysis identifies those economic sectors with the largest employment in the area. These are industry, manufacturing and trade, which together account for 46% of the jobs in the affected area. To evaluate the effect of Class I redesignation on economic expansion and future industrial plant development in the affected area, the FCP Community prepared an independent air dispersion modeling analysis to determine the air quality impacts on the Class I area from various new projects. These included a 250-ton-per-day paper mill, three different types of power plants, and a mining project.

The modeling and screening results analyzed indicate that the proposed Class I redesignation should not have major effects on economic expansion and industrial development in the region. The redesignation could restrict the sifting of large paper mills and large coal-fired powered plants to at least 10 km from the reservation, and would limit the development of multiple projects that would have an unacceptable cumulative effect on the Class I increments, but none of the known proposed developments in the region would be adversely affected.

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*. We are not promulgating any new paperwork requirements (e.g., monitoring, reporting, recordkeeping) as part of this final action. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*., and has assigned OMB control number 2060–0003, EPA ICR number 1230.20. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

This analysis included an examination of the additional regulatory burden, per regulated unit, on those sources constructing or modifying near a Class I area, and which may be required to perform a Federal Class I area analysis to determine the effect of the proposed source on AQRV inside the Class I area, and on the consumption of increment, where the baseline has been triggered. It is important to note that not all sources located near Class I areas would have to perform such monitoring; these requirements apply only when emissions from the source have the potential to impact the Class I area.

The EPA's analysis for OMB included the additional burden placed upon the regulated community as well as on State and Federal agencies. The redesignation of FCP Community lands from Class II to Class I is wholly consistent with the analysis put forth in EPA's ICR and OMB's approval and no new paperwork requirements are being promulgated with this action.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. This action does not require a regulatory flexibility analysis because it will not have a significant economic impact on a substantial number of small entities.

The EPA believes that the reclassification of the proposed area to Class I will impose virtually no additional requirements on small entities, regardless of whether they are minor sources or major sources. For small entities that are also minor sources, since at the present time the baseline concentrations for this area have not been triggered and none of the Class I increments have yet been consumed, minor emission sources are unaffected by PSD requirements. Should the Class I increments be completely consumed in the future, it is possible that some pollution control requirements would fall to minor sources. However, any such future pollution control requirements imposed on off-reservation sources would be under the jurisdiction of the states, not EPA. Therefore, EPA is not in a present or future position to directly regulate small entities and therefore is not required to conduct an RFA analysis.

For small entities that are major sources, the impact is not expected to be substantial. As demonstrated in section V.A., the requirements for demonstrating compliance with the NAAQS and PSD increments for major facilities in and surrounding Class I areas are similar to the requirements for major facilities in and surrounding Class II areas. Therefore, this action will not have a significant impact on a substantial number of small entities.

While EPA is not required to conduct an RFA analysis, as a matter of good public policy, the Agency has reviewed information on the impact of the redesignation provided by the FCP Community in its *Technical Report* submitted pursuant to the Tribe's request for Class I redesignation. In this document, the Tribe reviewed the potential impact of the Class I redesignation on various types of sources, concluding that impacts of the redesignation to Class I would impact only certain major stationary sources, and would impose no additional requirements on minor sources.

For example, air dispersion modeling and EPA-approved screening performed

for the Tribe's TSD demonstrates that a 140 MW natural gas fired combustion turbine power plant could be constructed and operated directly adjacent to the reservation without violating any of the Class I increments. Power plants of this type produce relatively high levels of nitrogen oxides (NO_X), which are their major emissions, yet despite its direct proximity to a Class I area, such a facility would impact only a small fraction (~4%) of the allowable Class I increment for NO_X. Considering that the FCP Community analysis shows that a major gas-fired power generating facility could be operated immediately next to the reservation without significant impacts, and that only very large industrial projects located within approximately 10 km of the reservation would be affected by the redesignation, it appears very unlikely that any small businesses located within 100 kilometers would produce emissions in large enough quantities to trigger the Class I restrictions.

Nevertheless, it is possible that a small business located close enough to the reservation may be a major source of criteria air pollutants. Even in that event, the PSD requirements for Class I areas would be very unlikely to impose a significant financial burden on such a small business. If it is an existing business at the time the redesignation goes into effect, it would not be subject to the PSD permitting requirements, which apply only to new stationary sources or major modifications to existing sources.

Even if the small business in question was new to the Class I area, hence subject to PSD permitting, the redesignation would still not impose additional significant financial or regulatory burdens on the small entity. As a major source of criteria air pollutants, the small business would be subject to PSD permitting regulations whether the reservation had been redesignated to Class I or had remained a Class II area, as it is now. Major stationary sources proposing to locate in any PSD area, regardless of whether it is Class II or Class I, must still conduct the same type of analyses to measure the impact of their emissions on the allowable increments and use the best available control technology to reduce their emissions and minimize adverse effects.

Should the area remain Class II, the major source would still be required to perform a modeling analysis to ensure that the Class II increments are protected in order to obtain a permit. Since a modeling analysis is required in any case, the cost of adding additional receptor points, if needed, to the modeling analysis to gather the necessary data to ensure that the Class I increments will also be protected should be relatively small. Likewise, since every major stationary source proposing to locate in a PSD area, whether it has been designated as Class I or Class II, must employ ''best available control technology'' to reduce emissions, proximity to a Class I area generally would not affect the level of control required to meet BACT. In short, regardless of whether they are in a Class II or a Class I area, major sources are required to obtain an air quality permit, conduct modeling analyses, and use the best available technology to control emissions under the PSD program. Thus, as a general rule, redesignation should not inflict additional control costs on a source.

Under certain circumstances a major source may be required to achieve further decreases in emissions to reduce its impact on the air quality related values of a Class I area. Such a requirement would necessitate further regulatory action by either the FCP Community or EPA, however, and the impacts of the specific requirements can be appropriately assessed at that time. Additionally, it would be very unusual for a small business to also be a major source and a substantial number of small entities should certainly not be so affected.

Several other Indian Tribes have redesignated tribal lands to Class I in other parts of the country, and their experience can provide us with some insight into the impact redesignation typically has on small entities in the vicinity. These include the Northern Cheyenne Tribe, Montana; Flathead Indian Reservation, Montana; Fort Peck Indian Reservation, Montana and the Spokane Indian Reservation, Washington, which were redesignated as Class I areas between 1977 and 1990. Thus far, there has been very little economic impact on small businesses, nearby towns, local governments or other small entities following Class I redesignation in those areas. The EPA has no reason to believe that same pattern of minimal economic impact to small businesses will not be repeated in Forest County and the surrounding counties.

Small entities that are minor sources of air pollution will not be affected at all by this action at this time. The PSD permit program does not cover minor sources and, as previously discussed, EPA does not directly regulate minor entities. The reclassification of the proposed area to Class I therefore imposes virtually no additional requirements on small entities since the baseline concentration level for Forest County has not yet been triggered and none of the PSD increments in the area have yet been consumed. The baseline concentration is the conceptual reference point or ''starting'' point for determining air quality deterioration in an area subject to the PSD program. Thus, the baseline concentration is essentially the ambient air quality existing at the time the first complete PSD application is made for a major new source affecting a PSD baseline area. Since no PSD permit application triggering a baseline date has been submitted in the Forest County area, there has not been any consumption of the PSD increments in the area. Should major and minor sources of pollution consume all of the available increment in an area at some point in the future, it is possible that some pollution control requirements would then fall to minor sources, but since roughly 75% of the land in Forest County is National Forest, and there is presently very little industrial development in the area, there is likely to be little consumption of the Class I increments for some time to come.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities that are not major sources because this action affects only major stationary sources, as defined by 40 CFR 52.21.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205

allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The redesignation would not impose significant additional financial or regulatory burdens on a new or modified source subject to the PSD permitting requirements. As a major source of criteria air pollutants, a new or modified source would be subject to PSD regulations whether the reservation had been redesignated to Class I or had remained a Class II area, as it is now. New major stationary sources proposing to locate in any PSD area, regardless of whether it is Class II or Class I, must still conduct the same type of analyses to measure the impact of their emissions on the allowable increments and use the best available control technology to reduce their emissions and minimize adverse effects. No additional permits would be required as a result of a redesignation of FCP Community reservation lands. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because, as already stated in other sections of this regulatory package, the redesignation from a Class II to a Class I area would not impose additional significant financial or regulatory burdens on sources. Thus, this rule is not subject to the requirements of sections 202 and 205 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'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule merely implements an authority currently available to Indian Tribes to redesignate their reservation lands under the PSD program of the CAA, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. A summary of the concerns raised during that consultation and EPA's response to those concerns are provided in the public docket of this rulemaking.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' 65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The EPA has concluded that this final rule establishes federal standards and will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Thus, consistent with section 3 of the Executive Order, in the process of developing this final action, EPA consulted with FCP Community tribal officials to allow them to have meaningful and timely input into its development. EPA consulted with representatives of the FCP Community prior to their submission of the redesignation request. During this consultation, EPA explained the function of the CAA's redesignation provision, differences between Class I and Class II designations, and alternatives to the proposed Class I redesignation.

The FCP Community chose to submit a request for redesignation to Class I on February 14, 1995 to further their goal of exercising control over reservation resources and to better protect the members of their community. Since the FCP Community submitted its request for redesignation, EPA has kept the FCP Community informed of its process for completing the rulemaking through written correspondence, conference calls, and face to face meetings when appropriate. Records of these communications are found in the docket for this final action. Most recently, EPA officials held consultations with the FCP Community between February and August 2007 to discuss this final action and to answer the Community's questions. Overall, EPA expects that the impact of the redesignation to Class I will be positive.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 19885 (April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and the Agency does not have reason to believe the

environmental health or safety risks addressed by this action present a disproportionate effect on children. Redesignation of the identified parcels of the FCP Community Reservation to Class I status will reduce the allowable increase in ambient concentrations of various types of pollutants. The reduction of these pollutants can only be expected to better protect the health of tribal members, members of the surrounding communities, and especially children and asthmatics.

The adverse health effects of exposure to high levels of criteria air pollutants such as sulfur dioxide and fine particulate matter are well known and well documented. Sulfur dioxide, for example, is known to irritate the respiratory system. As explained in the FCP Community's Technical Support Document, exposure to high concentrations for even short periods can cause bronchial constriction and exposure to lower concentrations of sulfur dioxide for longer periods and suppresses the respiratory system's natural defenses to particles and bacteria.[13] Children and asthmatics are especially vulnerable to the adverse health effects of sulfur dioxide.[14] If the Class I redesignation is codified in a FIP, the allowable increase in ambient concentrations of sulfur dioxide after redesignation of the reservation to Class I status (on an annual arithmetic mean basis) will be one-tenth of the current Class II allowable increase in ambient concentrations, thus providing greater health protection to children from such air pollutants.

Likewise, the allowable increase in ambient concentrations of particulate matter after Class I redesignation (on an annual basis) will be approximately one-fourth of the current Class II increase. Particulate matter consists of airborne particles and aerosols ranging in size from less than 1 micrometer to more than 100 micrometers. Aside from natural sources, industrial activity can release great quantities of particulates (dust, soot, ash and other solid and liquid particles). Combustion products emitted during power generation, heating, motor vehicle use and various industrial processes are also classified as particulate matter. The vast majority (~99%) of such inhalable particulate matter is trapped in the upper respiratory tract, but the remainder enters the windpipe and the lungs, clinging to the protective mucosa. The smallest particles are deposited in the alveoli and capillaries of the lung, where they impair the exchange of oxygen and causes shortness of breath. Children, the elderly, and people with pulmonary problems and respiratory conditions (e.g., emphysema, bronchitis, asthma, or heart problems) are the most susceptible to these debilitating effects.[15] Adverse health effects from particulate matter are often cumulative and progressive, worsening as particulates gradually collect in the lungs following repeated, long-term exposure.[16]

Fine particulate matter is the worst offender in that regard. Scientific studies have shown that particulate matter, especially fine particles (those particles with an aerodynamic diameter of less than 2.5 micrometers and commonly known as $PM_{2.5}$), are retained deep within the lung.[17] Short term exposure to such fine particulate matter can cause lung irritation and may impair immune responses. Some of the material from the particles can dissolve in the lungs, causing cell damage, and the particles themselves may consist of compounds that are toxic or which form acids when combined with moisture in the lungs. Long-term lower level exposures can cause cancer and other respiratory illnesses. Reducing the allowable increase in ambient concentrations of particulate matter by roughly 75% should thus provide greater health protection from such afflictions to children on the reservation and in the surrounding communities.

In short, the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. In fact, they are expected to have a positive rather than a negative impact on children's health and the environment.

H. Executive Order 13211: Actions That Significantly Effect 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 of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. *Executive Order 12898:* Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this 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.

The EPA believes that the redesignation of FCP Community lands in a FIP from Class II to Class I area should not raise any environmental justice issues since it will reduce the allowable increase in ambient concentrations of various types of pollutants. Consequently, this redesignation should result in health

[13] SO_2—How Sulfur Dioxide Affects the Way We Live & Breathe. U.S. EPA Office of Air Quality Planning & Standards (November 2000) (available at *http://www.epa.gov/air/urbanair/so2/index.html*).

[14] Health and Environmental Impacts of SO_2 (September 30, 2003) (available at *http://www.epa.gov/air/urbanair/so2/hlth1.html*).

[15] Health and Environmental Impacts of PM (30 September 2003) (available at *http://www.epa.gov/air/urbanair/pm/hlth1.html*).

[16] PM—Chief Causes for Concern (30 September 2003) (available at *http://www.epa.gov/air/urbanair/pm/chf.html*).

[17] Information on Particulate Matter (FINE) PM Condensed from Health and Environmental Effects of Particulate Matter; U.S. EPA Office of Air Quality Planning and Standards (July 1997). (available on *http://www.air.dnr.state.ga.us/information/pm25.html*).

benefits to tribal members and members of the surrounding communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective May 29, 2008.

VII. Statutory Authority

The statutory authority for this final action is provided by sections 110, 301 and 164 of the CAA as amended (42 U.S.C. 7410, 7601, and 7474) and 40 CFR part 52.

List of Subjects in 40 CFR Part 52

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

Dated: April 18, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2581 is amended by adding paragraph (f) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(f) Forest County Potawatomi Community Reservation.

(1) The provisions for prevention of significant deterioration of air quality at 40 CFR 52.21 are applicable to the Forest County Potawatomi Community Reservation, pursuant to § 52.21(a).

(2) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), those parcels of the Forest County Potawatomi Community's land 80 acres and over in size which are located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. For clarity, the individual parcels are described below, all consisting of a description from the Fourth Principal Meridian, with a baseline that is the Illinois-Wisconsin border:

(i) Section 14 of Township 36 north (T36N), range 13 east (R13E).

(ii) Section 26 of T36N R13E.

(iii) The west half (W½) of the east half (E½) of Section 27 of T36N R13E.

(iv) E½ of SW¼ of Section 27 of T36N R13E.

(v) N½ of N½ of Section 34 of T36N R13E.

(vi) S½ of NW¼ of Section 35 of T36N R13E.

(vii) Section 36 of T36N R13E.

(viii) Section 2 of T35N R13E.

(ix) W½ of Section 2 of T34N R15E.

(x) Section 10 of T34N R15E.

(xi) S½ of NW¼ of Section 16 of T34N R15E.

(xii) N½ of SE¼ of Section 20 of T34N R15E.

(xiii) NW¼ of Section 28 of T34N R15E.

(xiv) W½ of NE¼ of Section 28 of T34N R15E.

(xv) W½ of SW¼ of Section 28 of T34N R15E.

(xvi) W½ of NE¼ of Section 30 of T34N R15E.

(xvii) SW¼ of Section 2 of T34N R16E.

(xviii) W½ of NE¼ of Section 12 of T34N R16E.

(xix) SE¼ of Section 12 of T34N R16E.

(xx) E½ of SW¼ of Section 12 of T34N R16E.

(xxi) N½ of Section 14 of T34N R16E.

(xxii) SE¼ of Section 14 of T34N R16E.

(xxiii) E½ of Section 16 of T34N R16E.

(xxiv) NE¼ of Section 20 of T34N R16E.

(xxv) NE¼ of Section 24 of T34N R16E.

(xxvi) N½ of Section 22 of T35N R15E.

(xxvii) SE¼ of Section 22 of T35N R15E.

(xxviii) N½ of SW¼ of Section 24 of T35N R15E.

(xxix) NW¼ of Section 26 of T35N R15E.

(xxx) E½ of Section 28 of T35N R15E.

(xxxi) E½ of NW¼ of Section 28 of T35N R15E.

(xxxii) SW¼ of Section 32 of T35N R15E.

(xxxiii) E½ of NW¼ of Section 32 of T35N R15E.

(xxxiv) W½ of NE¼ of Section 32 of T35N R15E.

(xxxv) NW¼ of Section 34 of T35N R15E.

(xxxvi) N½ of SW¼ of Section 34 of T35N R15E.

(xxxvii) W½ of NE¼ of Section 34 of T35N R15E.

(xxxviii) E½ of Section 36 of T35N R15E.

(xxix) SW¼ of Section 36 of T35N R15E.

(xl) S½ of NW¼ of Section 36 of T35N R15E.

(xli) S½ of Section 24 of T35N R16E.

(xlii) N½ of Section 26 of T35N R16E.

(xliii) SW¼ of Section 26 of T35N R16E.

(xliv) W½ of SE¼ of Section 26 of T35N R16E.

(xlv) E½ of SW¼ of Section 30 of T35N R16E.

(xlvi) W½ of SE¼ of Section 30 of T35N R16E.

(xlvii) N½ of Section 34 of T35N R16E.

[FR Doc. E8–8946 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1188; FRL–8559–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Stationary Generator Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision contains provisions to control emissions from stationary generators. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1188. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly

available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 2008 (73 FR 11845), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the provisions to control emissions from stationary generators. The formal SIP revision was submitted by the State of Delaware on November 1, 2007. Specific requirements of Delaware's regulation to control emissions from stationary generators and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving Regulation No. 1144—Control of Stationary Generator Emissions, as a revision to the Delaware SIP. This regulation will help ensure that the air emissions from new and existing generators do not cause or contribute to the existing air quality problems with regard to ground-level ozone and fine particulate matter, thereby adversely impacting public health, safety, and welfare.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 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, pertaining to Delaware's regulation to control emissions from stationary generators, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 15, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by adding entries for Regulation No. 1144—Control of Stationary Generators Emissions at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	* * * *	*	*	*
Regulation No. 1144 Control of Stationary Generator Emissions				
Section 1.0	General	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 2.0	Definitions	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 3.0	Emissions	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 4.0	Operating Requirements	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 5.0	Fuel Requirements	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 6.0	Record Keeping and Reporting	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 7.0	Emissions Certification, Compliance, and Enforcement	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 8.0	Credit for Concurrent Emissions Reductions	01/11/06	4/29/08 [Insert page number where the document begins].	
Section 9.0	DVFA Member Companies	01/11/06	4/29/08 [Insert page number where the document begins].	

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[FR Doc. E8–9262 Filed 4–28–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1068; FRL–8559–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(1) 8-Hour Ozone Maintenance Plan for the White Top Mountain, Smyth County, VA 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to a 10-year maintenance plan for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1068. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the States in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual ''typical summer day'' emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the 10-year maintenance period, from a base-year chosen by the State; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15,

2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; (5) a verification of continued attainment, indicating how the State intends on tracking the progress of the maintenance plan.

On February 26, 2008 (73 FR 10201), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a 10-year maintenance plan for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. The formal SIP revision was submitted by the Commonwealth of Virginia on August 6, 2007.

Other specific requirements of the 10-year maintenance plan under section 110(a)(1) for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Summary of SIP Revision

Virginia has requested approval of a revision consisting of a 10-year maintenance plan under section 110(a)(1) for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. The Virginia Department of Environmental Quality (VADEQ) 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 Guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA's review of this revision indicates that the Commonwealth of Virginia has addressed the components of a maintenance plan pursuant to EPA's May 20, 2005 guidance, and meets the requirements of section 110(a)(1) of the CAA. EPA is approving the Virginia SIP revision for White Top Mountain, Smyth County, Virginia, which was submitted on August 6, 2007.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Virginia's SIP revision request consisting of a 10-year maintenance plan under section 110(a)(1) for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 15, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 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 XX—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding an entry for the 8-hour Ozone Maintenance plan for the White Top Mountain, Smyth County, VA 1-hour Ozone Nonattainment Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	* * *	*	*	*
Ozone Maintenance Plan.	White Top Mountain, Smyth County, VA 1-hour Ozone Nonattainment Area.	8/6/07	8/29/08.	

[FR Doc. E8–9266 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1091–200813; FRL–8559–1]

Approval and Promulgation of Implementation Plans Kentucky: Tennessee Valley Authority Paradise Facility State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a source specific State Implementation Plan (SIP) revision submitted on October 19, 2007, by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ). This SIP revision supercedes a previous source-specific revision approved by EPA on August 25, 1989, including an equivalency demonstration supporting the redistribution of sulfur dioxide (SO_2) emissions from Tennessee Valley Authority's (TVA's) Paradise Steam Plant located in Muhlenburg County, Kentucky. The revision being approved now includes SO_2 limits that are more stringent than the current SIP-approved statewide SO_2 limits for electric generating units (EGUs). Consistent with Kentucky Administrative Regulations (KAR) approved into the SIP, affected facilities located in Muhlenberg County are subject to an SO_2 emission limit of 3.1 pounds per million British Thermal Units (lbs/mmBTU). The 3.1 lbs/mmBTU limit was approved by EPA on June 24, 1983, as part of Kentucky's control strategy for attaining and maintaining the primary and secondary SO_2 national ambient air quality standard (NAAQS) in Muhlenberg County. This current SIP action will approve a limit of 1.2 lbs/mmBTU for all three units with limited bypass emissions of 3.1 lbs/mmBTU for scrubber maintenance on Unit 3. This revision was proposed for approval on February 5, 2008, and no adverse comments were received.

DATES: *Effective Date:* This rule will be effective May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–1091. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2007, KDAQ submitted to EPA a source-specific SIP revision requesting that the 1989 source-specific redistribution of SO_2 emission limits for TVA Paradise be revised to account for new control technology at the facility. KDAQ proposed that the TVA Paradise facility be subject to specific limits discussed below which are more stringent than Kentucky's SIP-approved KAR, requiring a 3.1 lbs/mmBTU limit. The rationale for the 1989 equivalency determination and redistribution was the lack of control measures (a scrubber) on Unit 3. TVA has now installed a wet scrubber on Unit 3, and as a result, the 1989 redistribution is no longer necessary for the facility to comply with the SIP-approved 401 KAR 61:015. At this time, Units 1 and 2 are equipped with Venturi-type limestone slurry flue gas desulfurization (FGD) scrubbers, and Unit 3 is equipped with an electrostatic precipitator and a wet limestone FGD scrubber. The facility is now able to meet (and exceed) the requirements of 401 KAR 61:015 without a unit-specific redistribution. The new SO_2 limits are: 1.2 lbs/mmBTU for all three units with a 3.1 lbs/mmBTU limit allowed at Unit 3 for a limited time for scrubber maintenance. This revision is consistent with section 110 of the Clean Air Act (CAA) because it will continue to provide for attainment and maintenance of the SO_2 NAAQS. EPA proposed this revision for approval on February 5, 2008 (73 FR 6657), and no adverse comments were received.

Final Action

EPA is taking final action to approve a source-specific SIP revision submitted by KDAQ in October 2007 regarding the SO_2 emission limits for the three units at the TVA Paradise Facility. This action will supersede the 1989 source-specific SIP revision and subject TVA Paradise to emission limits of 1.2 lbs/mmBTU at Units 1, 2, and 3, except that Unit 3 may meet the limit of 3.1 lbs/mmBTU that is established in 401 KAR 61:015 during the limited times when the Unit 3 scrubber is bypassed for maintenance (not to exceed 720 operating hours in a 12-month period).

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves Kentucky law as meeting Federal requirements and does not impose additional requirements beyond those imposed by Kentucky law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 17, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

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 S—Kentucky

■ 2. Section 52.920 (d) is amended:

■ a. By revising the entry for ''TVA Paradise Permit,'' and

■ b. by adding a new entry at the end of the table for ''TVA Paradise Permit'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
.				
*	*	*	*	*
TVA Paradise Permit.	KDEPDAQ Permit 0–87–012	6/29/87	08/25/89, 54 FR 35326	WITHDRAWN
.				
*	*	*	*	*
TVA Paradise Permit.	KDEPDAQ Permit 0–87–012	10/19/07	4/29/08 [Insert citation of publication].	Emission Rates Units 1 and 2 are 1.2 lb/MMBTU and Unit 3 is 1.2 lb/MMBTU or *3.1 lb/MMBTU.

*Bypass of the scrubber shall be limited to 720 operating hours in any 12 consecutive months.

* * * * *

[FR Doc. E8–9252 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8557–5]

Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; Dispute Resolution with the State of Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of dispute resolution.

SUMMARY: The purpose of this notice is to announce the EPA resolution of an intergovernmental dispute over a request by the Forest County Potawatomi Community (FCP Community) to redesignate portions of the FCP Community reservation as a non-Federal Class I area under the Clean Air Act (CAA or Act) program for Prevention of Significant Deterioration (PSD) of air quality. On June 8, 1995, the Governors of Wisconsin and Michigan raised concerns about EPA's proposal to approve the request of the FCP Community to redesignate portions of its reservation as a non-Federal Class I area and asked EPA to enter negotiations with the parties to resolve the dispute as provided for in the CAA. The State of Michigan and the FCP Community were unable to reach an agreement concerning the redesignation. After fully considering the concerns raised by the State of Michigan, EPA has determined that it is not proper in these particular circumstances to disapprove the FCP Community's redesignation request. The Class I redesignation is described in a final rulemaking notice also published in this **Federal Register**. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen oxide within the reservation.

DATES: This action is effective on May 29, 2008.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507; telephone number: 312–886–0671; fax number: 312–886–5824; e-mail address: *blathras.constantine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. General Information

A. Does This Action Apply to Me?

This action will apply to applicants to the PSD construction permit program on Class I trust lands of the Forest County Potawatomi Community.

B. How Can I Get Copies Of This Document and Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–WI–0002. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. The docket is also available during normal business hours for public inspection and copying at the Air Programs Branch, Region 5, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

2. *Electronic Access.* You may access this **Federal Register** document

electronically through the EPA Internet under the ''**Federal Register**'' listings at: *http://www.epa.gov/fedrgstr*. In addition to being available in the docket and on the EPA **Federal Register** Internet Web site, an electronic copy of this notice is also available on the EPA's New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr/actions.html.*

C. How is This Notice Organized?

The information in this notice is organized as follows:

I. General Information
A. Does this Action Apply to Me?
B. How Can I Get Copies Of This Document and Related Information?
C. How is this Notice Organized?
II. This Notice
A. Area Proposed for Redesignation
B. Authority for Invoking Dispute Resolution Procedures
C. Agency Action

II. This Notice

A. Area Proposed for Redesignation

On February 14, 1995, the FCP Community submitted a request to the EPA to approve the redesignation of the air quality status of the FCP Community's Reservation from ''Class II'' to ''Class I'' under the CAA's PSD regulations. The area of FCP Community reservation lands that has been proposed for redesignation to Class I comprises 10,818 acres, all of which is located in Forest County, Wisconsin.

B. Authority for Invoking Dispute Resolution Procedures

Section 164(e) of the CAA and 40 CFR 52.21(t) provide the current statutory and regulatory framework for resolving disputes between states and Tribes over redesignation of an area or for permits for new major emitting facilities that may cause or contribute to a cumulative change in air quality under the PSD program. Section 164(e) provides that if the Governor of an affected state or the appropriate Indian Governing Body of an affected Tribe disagrees with a request for redesignation by either party, then the governor or Indian ruling body may request that EPA negotiate with the parties to resolve the dispute. The statute provides that either party can ask the Administrator for a recommendation to resolve the dispute, and if the parties fail to reach an agreement during the negotiations, ''the Administrator shall resolve the dispute and his determination, or the results of the agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.'' Section 164(e), 42 U.S.C. 7474(e).

Similarly, if a permit is proposed to be issued for any new major emitting facility proposed for construction in any state which the Governor of an affected state or the governing body of an affected Indian Tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed within the affected state or reservation, the Governor or Tribal ruling body may invoke the same dispute resolution mechanism. States or Tribes with Class I areas cannot, however, ''veto'' permits that may adversely affect those areas.

In resolving a dispute, the statute directs EPA to ''consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have quality related values of such area.'' As further discussed in the response to comments concerning the disputed issues, the CAA and its implementing regulations do not contain a minimum size requirement for area redesignation by a state or Tribe, and the size of the redesignated area is relevant only to the extent that it may impact effective air quality management or air quality related values (AQRVs). The Act does not define AQRVs nor identify specific AQRVs other than visibility (*See* section 165(d)(2)(B) of the Act), but in the legislative history to the Act, AQRVs are described as follows:

> The term ''air quality related values'' of Federal lands designated as Class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands ''is to conserve the scenery and the natural historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

C. Agency Action

1. Background on Redesignation Request

Pursuant to section 164(c), 42 U.S.C. 7474(c), the FCP Community Tribal Council formally submitted a proposal to redesignate certain FCP Community reservation lands from Class II to Class I to the EPA on February 24, 1995. A Class I air quality designation provides greater protection for air resources by decreasing the increases allowed in the ambient concentrations of particulate matter, sulfur dioxide, and nitrogen oxides from any new major stationary sources or major modifications to existing sources in the vicinity. The types of facilities whose emissions could impact these lower limits are generally new or expanding large industrial sources such as electric utilities and pulp and paper mills. No new operating permits or additional controls would be required for existing sources solely as a result of a Class I designation.

Along with reducing allowable concentrations of key pollutants, Class I areas may also include AQRVs which are intended to further protect air quality. In the case of the FCP Community redesignation, the Tribe has proposed acidic and mercury deposition as the AQRVs it is seeking to protect. Because state officials were concerned about AQRVs and other issues, an intergovernmental dispute eventually developed and the parties ultimately sought dispute resolution under section 164(e).

By statute, the Agency must approve or disapprove a request for redesignation. Accordingly, on June 29, 1995, EPA published a notice in the **Federal Register** (FR) proposing to approve the redesignation request by the FCP Community to Class I area status. The notice provided for a 60 day public comment period. However, on June 8, 1995, the Governors of Wisconsin and Michigan sent a joint letter to EPA objecting to EPA's proposal to grant the FCP Community request for redesignation and requesting dispute resolution. The June 8 letter focused on two concerns, first, the states' perception that EPA lacked rules to handle such redesignation requests and the implementation of non-federal Class I areas, and second, that a non-federal Class I area would ''significantly infringe upon the ability of our state governments to manage the natural resources of our states.'' [1]

To address their concerns, the Agency published a FR notice (60 FR 40139) on August 7, 1995, postponing the scheduled August 2, 1995 public hearing and extending, at the states' request, the public comment period indefinitely while the Agency attempted to negotiate with the states and respond to the issues they had raised.

As already noted, section 164(e) of the Act allows either the Governor of a state or the Indian ruling body that disagrees with a proposed redesignation to request the Administrator to enter into negotiations with the parties involved to resolve the dispute. In response to the Governors' letter, EPA contracted with a professional mediation service (RESOLVE, Inc.) to provide mediation

[1] Letter from Governor Tommy G. Thompson and Governor John Engler to Carol Browner, June 8, 1995.

services. During 1995, Wisconsin and the FCP Community began work toward developing a Memorandum of Understanding, and invited Michigan to participate in this process. RESOLVE discussed the case with EPA and the parties, and circulated resumes and a list of potential mediators for comment by the parties, but the parties could not agree on a mediator and none was selected.

In the meantime, in partial response to the states' request that EPA promulgate rules to address non-federal Class I areas, EPA had formed a senior workgroup to cooperatively develop options for consideration by the states and Tribes regarding roles and responsibilities of non-Federal Class I area managers. To gather public comment on different proposals, EPA published an advanced notice of proposed rulemaking (ANPR) on May 16, 1997. 62 FR 27158 (May 16, 1997). The EPA held public workshops in Chicago and Phoenix on the ANPR, and gathered testimony on the options for proposed rulemaking. 62 FR 33786 (June 23, 1997). The states had requested that EPA's action of the FCP Community Class I request be delayed until after the Agency could complete this rulemaking, but the rulemaking was not finalized.[2]

From 1995 through 1997, EPA engaged in an extended correspondence with Wisconsin and Michigan regarding the proposed redesignation and how to address both states' concerns, as reflected in the record for this action.

Following nearly 2 years of discussions, however, the states and the Tribe had not reached a resolution of the issues that had been raised by the states, nor had EPA completed the public notice process on the proposed redesignation. The issues included for Michigan, in addition to the two concerns discussed above, that the Agency promulgate additional rules to implement the dispute resolution provision at CAA section 164(e), that the Agency impose its own requirement that non-federal Class I areas be limited to those exceeding 5,000 acres in size with specified ''uniqueness'' criteria, and that the Agency promulgate additional rules to cover all aspects of implementing the requirements of established non-federal Class I area requirements.[3]

In the absence of an agreed resolution of either of the states' issues, on July 10, 1997, EPA moved to bring closure to the rulemaking process by publishing a notice for two informational meetings and two public hearings on the FCP Community's redesignation request with a public comment period to close on September 15, 1997. 62 FR 37007 (July 10, 1997). EPA held public hearings on the proposed redesignation on August 12, 1997, in Carter, Wisconsin, and August 13, 1997, in Rhinelander, Wisconsin. By the close of the public comment period, EPA had received more than 120 comments on the proposed redesignation.

On April 21, 1998[4], Wisconsin requested that EPA reinitiate the dispute resolution process under section 164(e). In response, EPA sent letters to the State of Wisconsin, the State of Michigan, and the FCP Community requesting a meeting to begin the negotiations to resolve the dispute. EPA requested that the parties each identify its chief negotiator, and that each party submit a written list of issues that it wished to submit to the dispute resolution process. EPA, in consultation with the parties, requested RESOLVE to select a mediator, and this time, Triangle Associates, Inc., Seattle, Washington, was chosen to mediate the discussions.

EPA requested that the mediator interview each of the parties, discuss the issues submitted by each party, and structure a dispute resolution process tailored to the needs of this dispute. Following the initial interview, the Agency requested an initial meeting of all parties to agree upon a protocol, establish a list of issues appropriate for discussion under section 164(e), and plan a series of further meetings aimed at resolving the dispute.

The first dispute resolution meeting occurred on September 2, 1998, at the Region 5 offices in Chicago, Illinois. Both the States of Wisconsin and Michigan participated in this meeting, although Michigan formally announced its participation solely as an ''observer.''[5] During this meeting, the states and the Tribe identified issues of concern and attempted to find areas of overlap that could potentially lead to resolution.

Following this first meeting, the parties requested that EPA examine the twenty-one issues submitted for dispute resolution to determine which would be appropriate for discussion and resolution under section 164(e) of the CAA. EPA Region 5, in consultation with EPA's headquarters offices (Office of Air and Radiation, Office of General Counsel, and Office of Air Quality Planning and Standards), by letter of November 6, 1998, ultimately submitted a list of six suitable topics for further discussion and resolution to the parties. These issues included: ''(1) Whether the lands proposed for redesignation are of sufficient size to allow for effective air quality management; (2) the extent to which the lands proposed for redesignation have sufficient size to have AQRVs; (3) the off-reservation impacts of redesignation as discussed in the [FCP Community's] Technical Report; (4) the Tribe's choice of mercury deposition as an AQRV; (5) the Tribe's choice of AQRVs; and (6) the roles and responsibilities of the respective parties in the dispute resolution discussion on September 2, 1998.''[6] The Agency also informed the parties that the remaining issues were either unsuitable for discussion under the CAA section 164(e), or where wholly within EPA's purview as a decision maker under CAA section 164(b) and 164(e).

On November 16, 1998, the Tribe and the State of Wisconsin held a second dispute resolution meeting in Green Bay, Wisconsin, but the State of Michigan elected not to participate in this meeting. Following several meetings, Wisconsin and the Tribe reached an agreement that resolved their dispute.

The parties circulated the final agreement for signature, and the EPA Region 5 Regional Administrator concurred on the agreement on October 12, 1999. Consistent with CAA section 164(e), the terms of the agreement constitute the resolution of the dispute between Wisconsin and the Tribe.

However, after observing the first dispute resolution session on September 2, 1998, the State of Michigan did not participate in any of the other dispute resolution sessions between the State of Wisconsin and the FCP Community. Triangle Associates, Inc. continued to keep Michigan abreast of the dispute resolution proceedings by forwarding the minutes of each negotiating session

[2] Thompson and Engler to Mary Nichols, February 6, 1977; Russell J. Harding, Director MDEQ, to EPA Air Docket, August 8, 1997. In any case, the States viewed the ANPR as inadequate because ''the rulemaking will not address all of our concerns related to Tribal Class I redesignation. The EPA must promulgate adequate rules governing *all aspects of Class I redesignation* before proceeding with a final decision on the Potawatomi or any other Tribal Class I requests (emphasis in original).''

[3] Letter from Russell J. Harding, MDEQ to Carlton Nash, Chief, Regulation Development Section, Region V EPA, September 15, 1997.

[4] Letter from Governor Tommy Thompson to Richard Wilson, Acting Assistant Administrator for Air and Radiation. April 21, 1998.

[5] Letter from [Gary R. Hughes, acting for] Russell J. Harding, Director MEDQ, to David A. Ullrich, Acting Regional Administrator, August 20, 1998.

[6] Letter from Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, to George E. Meyer, Secretary WDNR, and Joseph Young, attorney for FCP, November 6, 1998 (cc to Denis Drake, MDEQ).

to the state. Believing that the negotiations with Michigan had reached an impasse, on August 4, 1999, the Forest County Potawatomi Vice-Chairman contacted EPA in writing to request that the Administrator resolve the dispute with the State of Michigan under section 164(e). On December 22, 1999, the MDEQ sent a letter to EPA requesting a meeting between the FCP Community and Michigan as a continuation of the dispute resolution Michigan had invoked under section 164(e), stating that while the state still considered all of the issues it had previously raised to be unresolved, ''in the interest of resolving this matter, I request that [EPA] begin a negotiation with the FCP Community and the State of Michigan, as a continuation of the dispute resolution process, and in an effort to address the comments and resolve the objections previously forwarded by the State of Michigan.'' [7]

On April 25, 2000, Michigan submitted a list of twelve issues for discussion in the new round of dispute negotiations, which corresponded to issues previously raised by the state.[8] On June 23, 2000, the FCP Community submitted a letter to EPA responding to Michigan's request for dispute negotiations. The EPA set up a meeting between Michigan, the FCP Community, and EPA on January 9, 2001, in Chicago, Illinois. The parties exchanged initial draft proposed principles for resolution of the dispute negotiation. After reviewing their respective proposed principles, the parties could not reach an agreement. On February 12, 2001, the FCP Community submitted a letter to EPA requesting an EPA determination to resolve the dispute and adopt the FCP Community proposal as the final determination. On February 23, 2001, EPA sent a letter to both parties requesting that they submit to EPA their positions on the dispute negotiation and their proposals for resolution. On March 16, 2001, Michigan submitted its position on the section 164(e) resolution to EPA, reiterating the two central concerns originally identified in the joint-states' letter of June 8, 1995: (1) Lack of formally promulgated rules, and (2) potential impact of Class I area on state's air program management. The letter concluded ''if the EPA's final action does not impose any additional obligations upon Michigan's air program and does not subject Michigan air use permits to section 164(e) dispute resolution review, the need for Michigan to request review by the U.S. Sixth Circuit Court of Appeals of the designation of FCP Community lands may be obviated.'' [9] On March 19, 2001, the FCP Community submitted its position on the section 164(e) resolution to EPA.

On February 3, 2003, the FCP Community contacted EPA to request that the Agency's actions on the rulemaking be suspended for a 90-day period to allow the Tribe to attempt a bilateral negotiation with the State of Michigan's new administration. EPA encouraged the parties to meet and offered to reinitiate the dispute resolution process with the third-party mediator should the parties request this. On February 14, 2003, MDEQ responded that it would participate in bilateral discussions, but considered these outside the scope of the CAA section 164(e) dispute resolution process.[10] These discussions failed to produce an agreement, and in November 2003, the Tribe requested that EPA move forward with the rulemaking request.[11]

Although EPA provided updates for the states and Tribe on the progress of completing the rulemaking process, there was no further resolution of the issues raised by Michigan by the time EPA published the proposed FIP in December 2006.

2. EPA's Decision Regarding the Dispute Resolution Between the FCP Community and the State of Michigan

Michigan submitted extensive comments opposing the proposed Federal Implementation Plan (FIP) and reiterating its concerns regarding the redesignation. It objected to EPA's proposal to implement the redesignation through a FIP, to the validity of the agreement between Wisconsin and the Tribe, and to approving the redesignation before completing a rulemaking proposed in August 2006. See Proposed Rule: Review of New Sources and Modifications in Indian Country, 71 FR 48696 (August 21, 2006).

However, none of these comments provide a legally supportable basis for denying the redesignation. The CAA gives EPA only a very limited role in reviewing a redesignation request. As a general rule, EPA can ''disapprove the redesignation of any area only if [it] finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements'' in CAA section 164(b) and 40 CFR 52.21. ''Once these procedural requirements are met, EPA must approve the request for redesignation.'' *Administrator, State of Arizona* v. *EPA,* 151 F.3d 1205, 1211 (9th Cir. 1998), hereafter *Arizona* v. *EPA.* EPA cannot ''re-weigh the effects of a proposed redesignation or second-guess a tribe's decision to redesignate its reservation lands.'' *Id.* at 1212.

Where a neighboring state or tribe disagrees with the proposed redesignation of an area, section 164(e) provides a narrow exception to that general rule of limited EPA review. EPA believes that where there is a dispute, it must consider whether to resolve the dispute by disapproving the redesignation, based on the factors identified in 164(e). If EPA resolves the dispute in favor of the party requesting redesignation, the dispute is terminated, and the only remaining question is whether the Tribe met the procedural requirements of 164(b)(2). Because that inquiry involves only procedural adequacy, when EPA conducts that second inquiry, it cannot consider any information relating to any matter other than procedure, even if that information was considered in the dispute resolution. Consistent with that, EPA is treating this dispute resolution separately from the approval of the redesignation request and is publishing the two separately.

In resolving a dispute over redesignation under 164(e), EPA ''must consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values.'' *Arizona* v. *EPA*, construing CAA section 164(e). EPA recognizes that this language requires EPA to consider the size of a reservation in resolving a dispute. Consistent with that, in a previous dispute, EPA rejected a state's claim that reservation lands consisting of five noncontiguous parcels totaling 632 acres, with the smallest having 3.7594 acres should be disapproved; EPA found that the areas in question ''were not too small to allow effective air quality management or to have air quality related values.'' *Arizona* v. *EPA* (citing EPA finding with approval).

In this dispute, the state has not seriously argued that the lands the Tribe has requested for redesignation were too small ''to allow effective air quality management or have air quality related

[7] Letter from Russell J. Harding, MDEQ to Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, December 22, 1999.

[8] Letter from Russell J. Harding, MDEQ to Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, April 25, 2000.

[9] Letter from Russell J. Harding, MDEQ to Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, March 16, 2001.

[10] Letter from Steven E. Chester, Director MDEQ, to Al Milham, Vice Chairman, FCP Community, February 14, 2003.

[11] Letter from Al Milham, Vice Chairman, FCP Community to Steve Rothblatt, Director, Air and Radiation Division, Region 5, November 24, 2003.

values.''[12] Nevertheless, the statute directs EPA to consider that subject.

In its decision to grant the Class I redesignation request for the Yavapai-Apache reservation, EPA examined whether it would be difficult to perform a PSD air quality modeling analysis that assessed the impacts of a proposed source in such a situation. The EPA concluded that, based on the modeling tools available at that time, it would be relatively simple and practicable for a proposed source to project its impact on the Class I area parcels and evaluate the analysis. *See* 61 FR at 56457–56458. Moreover, current air quality planning and management tools have become increasingly sophisticated and refined and apply to a variety of area sizes and configurations, ranging from a single facility to large metropolitan areas. For example, EPA, in coordination with states has established nonattainment areas in states for the purpose of implementing nonattainment planning requirements for the lead National Ambient Air Quality Standards (NAAQS) that encompass areas of only a few square kilometers. *See* e.g., 40 CFR 81.310 and 40 CFR 81.311. Conversely, there is an ozone transport region under the CAA for the purpose of ozone nonattainment planning that spans from Maine to northern Virginia. *See* section 184(a) of the CAA. Thus, EPA is reluctant to establish rigid criteria regarding the geographic size, geographic orientation, or population size of a Class I area that would automatically disqualify certain Tribes (or states) from exercising the authority conferred under section 164(c) to redesignate lands within Reservations. *Arizona* v. *EPA*.

EPA believes it can evaluate the size of the lands in the proposed redesignation area based upon the Agency's experience in the Yavapai-Apache redesignation and other air quality planning requirements. EPA also notes that it is expected to use caution in reversing redesignation requests in resolving disputes. 61 FR at 56454–56455, (citing CAA Legislative History, vol 3 at 326).

The lands in this parcel are similar to the lands in Yavapai in containing noncontiguous parcels of various sizes. However, the lands here are many times larger, with a total acreage in excess of 10,000 acres, compared with the 632 acres in Yavapai, and with the smallest parcel being 80 acres, more than twenty times larger than the 3.7594 acre parcel in Yavapai. EPA recognizes the limits of fact matching, and does not believe that comparing acreage is necessarily dispositive in all cases. Nevertheless, it believes that based on both the result and the rationale in *Arizona* v. *EPA,* it has no basis for disapproving the redesignation based on size. EPA concludes that the size of the lands is not too small to allow effective air quality management or have AQRVs.

EPA must also consider whether it can consider any other factors, and, if so, how to do so. While 164(e) directs EPA to consider size in resolving a dispute, it does not mention other factors to consider, or discuss what discretion EPA may have with regard to considering other factors at all.

EPA believes that the mandatory language directing EPA to consider whether the proposed redesignation lands ''are of sufficient size to allow air effective air quality management or have air quality related values'' clearly establishes size as the preeminent factor in resolving disputes. EPA also believes that the references to ''effective air quality management'' and ''air quality related values'' indicates that those factors, too, may be relevant in some circumstances, to the appropriate resolution of a dispute. Thus, for example, where EPA concludes that some other factor besides size precludes effective air quality management, it may have some limited authority to resolve a dispute by disapproving a redesignation because effective air quality management is impossible.

EPA construes the reference to AQRVs in conjunction with a second use of the term in 164(e), providing that, if the parties so request, ''EPA shall make a recommendation to resolve the dispute *and* protect the air quality related values of the land involved.'' 164(e) (emphasis added). Thus, EPA believes that it has limited discretion to consider protection of AQRVs in resolving a dispute, and that in some circumstances, it may resolve a dispute by denying a redesignation where approving the redesignation would not be consistent with protecting AQRVs.

In sum, EPA has carefully considered the record in this case, and concludes it is not appropriate to deny the redesignation based on the size of the proposed area. EPA also concludes that the record does not show that the redesignation would preclude effective air quality management or be inconsistent with protecting AQRVs. EPA, therefore, resolves the dispute by rejecting the state's suggestion to deny the redesignation. EPA's approval decision is discussed in a separate notice.

EPA also notes that it does not agree with the State of Michigan comment that additional rulemaking should be proposed before EPA can resolve the dispute or approve the redesignation. The statutes that govern this decision, sections 164(b)(2) and 164(e) contain no limitations on EPA's redesignation authority of the type Michigan suggests.

[12] The State's arguments regarding size have centered on the State's complaints that EPA has not unilaterally adopted regulations that impose minimum acreage requirements of 5,000 acres on non-federal class I areas. See for example, Russell Harding to Carlton Nash, September 15, 1997, at 4; Letter from Russell Harding to Stephen Rothblatt, April 25, 2000.

List of Subjects in 40 CFR Part 52

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

Dated: April 18, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–8969 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8557–4]

Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; Dispute Resolution With the State of Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of dispute resolution.

SUMMARY: The purpose of this notice is to announce the resolution of an intergovernmental dispute over a request by the Forest County Potawatomi Community (FCP Community) to redesignate portions of the FCP Community reservation as a non-Federal Class I area under the Clean Air Act (CAA or Act) program for prevention of significant deterioration of air quality. On June 8, 1995, the Governors of Wisconsin and Michigan raised concerns about EPA's proposal to approve the request of the FCP Community to redesignate portions of its reservation as a non-Federal Class I area and asked EPA to initiate the intergovernmental dispute resolution process provided for in the CAA. The State of Wisconsin and the FCP Community were able to reach an agreement concerning the redesignation. After considering the final agreement signed by the FCP Community and the State of Wisconsin, EPA finds that this

agreement resolves the dispute and no further action is required by EPA. In a separate rulemaking published in this **Federal Register**, EPA is finalizing its proposed decision to redesignate the FCP Community as a non-Federal Class I area. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen oxide within the reservation.

DATES: This action is effective on May 29, 2008.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507; telephone number: 312–886–0671; fax number: 312–886–5824; e-mail address: *blathras.constantine@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. General Information

A. Does This Action Apply to Me?

This action will apply to applicants to the Prevention of Significant Deterioration (PSD) construction permit program on Class I trust lands of the Forest County Potawatomi Community.

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

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–WI–0002. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. The docket is also available during normal business hours for public inspection and copying at the Air Programs Branch, Region 5, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at: *http://www.epa.gov/fedrgstr/*. In addition to being available in the docket and on the EPA **Federal Register** Internet Web site, an electronic copy of this notice is also available on the EPA's New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr/actions.html*.

C. How Is This Notice Organized?

The information in this notice is organized as follows:

I. General Information
A. Does This Action Apply to Me?
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II. This Notice
A. Area Proposed for Redesignation
B. Authority for Invoking Dispute Resolution Procedures
C. Agency Action

II. This Notice

A. Area Proposed for Redesignation

On February 14, 1995, the FCP Community submitted a request to the EPA to approve the redesignation of the air quality status of selected parcels of the FCP Community's Reservation from ''Class II'' to ''Class I'' under the CAA's PSD regulations. The area of FCP Community reservation lands that has been proposed for redesignation to Class I comprises 10,818 acres, all of which is located in Forest County, Wisconsin.

B. Authority for Invoking Dispute Resolution Procedures

Section 164(e) of the CAA and 40 CFR 52.21(t) provide the current statutory and regulatory framework for resolving disputes between states and Tribes over redesignation of an area or for permits for new major emitting facilities that may cause or contribute to a cumulative change in air quality under the PSD program. Section 164(e) of the CAA provides that if the Governor of an affected state or the appropriate Indian Governing Body of an affected Tribe disagrees with a request for redesignation by either party, then the governor or Indian ruling body may request that EPA negotiate with the parties to resolve the dispute. Pursuant to the statute and implementing regulations, EPA is not a party to the dispute. The Administrator of EPA is, by statute, designated as the final arbitrator of the dispute. The statute provides that either party can ask the Administrator for a recommendation to resolve the dispute, and if the parties fail to reach an agreement during the negotiations, ''the Administrator shall resolve the dispute and his determination, or the results of the agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.'' Section 164(e), 42 U.S.C. 7474(e).

Similarly, if a permit is proposed to be issued for any new major emitting facility proposed for construction in any state, which the Governor of an affected state or the governing body of an affected Indian Tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed within the affected state or reservation, the Governor or Tribal ruling body may invoke the same dispute resolution mechanism. States or Tribes with Class I areas, however, cannot ''veto'' permits that may adversely affect those areas.

While EPA has authority to resolve disputes, this authority is exercised only if the parties in dispute do not reach an agreement during the dispute resolution process. A discussion of EPA's authorities to resolve disputes is found in EPA's notice resolving the dispute between the State of Michigan and the FCP Community, published in this **Federal Register**. Where, as here, in the case of Wisconsin and the FCP Community, the parties reached their own resolution of their issues, EPA believes that the agreement becomes part of the ''applicable plan'' and the dispute is ended. 42 U.S.C. 7474(e).

C. Agency Action

1. Background on Redesignation Request

Pursuant to section 164(c), 42 U.S.C. 7474(c), the FCP Community Tribal Council formally submitted a proposal to redesignate certain FCP Community reservation lands from Class II to Class I to the EPA on February 24, 1995. A Class I air quality designation provides greater protection for air resources by decreasing the increases allowed in the ambient concentrations of particulate matter, sulfur dioxide, and nitrogen oxides from any new major stationary sources or major modifications to existing sources in the vicinity. The types of facilities whose emissions could impact these lower limits are generally new or expanding large industrial sources such as electric utilities and pulp and paper mills. No new operating permits or additional controls would be required for existing sources solely as a result of a Class I designation.

Along with reducing allowable concentrations of key pollutants, Class I areas may also include air quality related values (AQRV) which are intended to further protect air quality. In the case of the FCP Community redesignation, the Tribe has proposed acidic and mercury deposition as the

AQRVs they are seeking to protect. Because state officials were concerned about AQRVs and other issues, an intergovernmental dispute eventually developed and the parties ultimately sought dispute resolution under section 164(e).

By statute, the Agency must approve or disapprove a request for redesignation. Accordingly, on June 29, 1995, EPA published a notice in the **Federal Register** (FR) proposing to approve the redesignation request by the FCP Community to Class I area status. The notice provided for a 60-day public comment period. However, on June 8, 1995, the Governors of Wisconsin and Michigan sent a letter to EPA objecting to EPA's proposal to grant the FCP Community request for redesignation and requesting dispute resolution. The June 8 letter focused on two concerns, first, the states' perception that EPA lacked rules to handle such redesignation requests and the implementation of non-federal Class I areas, and second, that a non-federal class I area would ''significantly infringe upon the ability of our state governments to manage the natural resources of our states.''[1]

To address their concerns, the Agency published a FR notice (60 FR 40139) on August 7, 1995, postponing the scheduled August 2, 1995 public hearing and extending at the states' request the public comment period indefinitely, while the Agency attempted to negotiate with the states and respond to the issues they had raised.

As already noted, section 164(e) of the Act allows either the Governor of a state or the Indian ruling body to request to the Administrator to enter into negotiations with the parties involved to resolve such a dispute. In response to the Governors' letter, EPA contracted with a professional mediation service (RESOLVE, Inc.) to provide mediation services. RESOLVE discussed the case with EPA and the parties, and circulated resumes and a list of potential mediators for comment by the parties.

In the meantime, EPA had formed a senior EPA workgroup to cooperatively develop options for consideration by the states and Tribes regarding roles and responsibilities of non-Federal class I area managers. To gather public comment on different proposals, EPA published an advanced notice of proposed rulemaking (ANPR) on May 16, 1997. 62 FR 27158. EPA held public workshops in Chicago and Phoenix on the ANPR, and gathered testimony on the options for proposed rulemaking. 62 FR 33786 (June 23, 1997). The ANPR was not finalized however, and no new regulations were established.

In further follow-up to the Wisconsin and Michigan Governor's letters invoking dispute resolution, EPA engaged in an extended correspondence with Wisconsin and Michigan regarding the relationship of the proposed redesignation to proposed rulemaking, which can be found in the record for this notice. Following nearly 2 years of discussions, however, the states and the Tribe had not reached a resolution of the issues that had been raised by the states, nor had EPA completed the public notice process on the proposed redesignation. Therefore, on July 10, 1997, EPA published notice for two informational meetings and public hearings on the FCP Community's redesignation request and established a close for the public comment period of September 15, 1997. 62 FR 37007 (July 10, 1997). EPA held two public hearings on the proposed redesignation on August 12, 1997, in Carter, Wisconsin, and August 13, 1997, in Rhinelander, Wisconsin, respectively. By the close of the public comment period, EPA had received more than 120 comments on the proposed redesignation.

On April 21, 1998[2], Wisconsin requested that EPA reinitiate the dispute resolution process under section 164(e). In response, EPA sent letters to the State of Wisconsin, the State of Michigan, and the FCP Community requesting a meeting to begin the negotiations to resolve the dispute. EPA requested that the parties each identify their chief negotiator, and that each party submit a written list of issues that they wished to resolve through the dispute resolution process. EPA, in consultation with the parties, requested RESOLVE to select a mediator, and Triangle Associates, Inc., Seattle, Washington, was chosen to mediate the discussions.

Once a mutually acceptable mediator had been agreed upon, EPA requested that the mediator establish a formal process for conducting compilation of issues, organizing and structuring meetings, and communication among the parties.[3] This included interviews with each of the parties, discussions of the issues lists submitted by each party, and structuring a series of meetings. Following an initial interview, the Agency requested a meeting of all parties to agree upon a protocol, establish a list of issues appropriate for discussion under section 164(e), and plan a series of further meetings aimed at resolving the dispute.

The first dispute resolution meeting occurred on September 2, 1998, at the Region 5 offices in Chicago, Illinois. Both the States of Wisconsin and Michigan participated in this meeting, and states and Tribe each identified issues of concern and attempted to find areas of overlap that could potentially lead to resolution.

Following this first meeting, the parties requested that EPA examine the twenty-one issues submitted for dispute resolution to determine which would be appropriate for discussion and resolution under section 164(e) of the CAA. EPA Region 5, in consultation with EPA's headquarters offices (Office of Air and Radiation, Office of General Counsel, and Office of Air Quality Planning and Standards), by letter of November 6, 1998, ultimately submitted to the parties a list of six suitable topics for further discussion and resolution. These issues included: ''(1) Whether the lands proposed for redesignation are of sufficient size to allow for effective air quality management; (2) the extent to which the lands proposed for redesignation have sufficient size to have air quality related values; (3) the off-reservation impacts of redesignation as discussed in the [FCP Community's] Technical Support Document; (4) the Tribe's choice of mercury deposition as an AQRV; (5) the Tribe's choice of AQRVs; and (6) the roles and responsibilities of the respective parties in the dispute resolution discussion on September 2, 1998.''[4] The Agency also informed the parties that the remaining issues were either unsuitable for discussion under the CAA section 164(e), or where wholly within EPA's purview as decision maker under CAA section 164(b) and 164(e).

On November 16, 1998, the parties held a second dispute resolution meeting in Green Bay, Wisconsin. However, the State of Michigan elected not to participate in this meeting.[5]

[1] Letter from Governor Tommy G. Thompson and Governor John Engler to Carol Browner, June 8, 1995.

[2] Letter from Governor Tommy Thompson to Richard Wilson, Acting Assistant Administrator for Air and Radiation, April 21, 1998.

[3] The public docket for this rulemaking contains documents relating to the dispute resolution process except those that are covered by privilege, such as the federal Alternative Dispute Resolution Act. Privileged documents are listed in the index, though have not been made available to the public.

[4] Letter from Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, to George E. Meyer, Secretary WDNR, and Joseph Young, attorney for FCP, November 6, 1998 (cc to Denis Drake, MDEQ).

[5] The State of Michigan did not participate in any subsequent dispute resolution meetings between Wisconsin and the FCP. The Administrator's resolution of the dispute between the State of Michigan and the FCP Community is concurrently published in a separate FR notice.

During the second meeting, the parties discussed each of the six issues, with each party having the opportunity to raise their specific concerns. The State of Wisconsin and FCP Community exchanged ideas for achieving a mutually acceptable resolution, which addressed both parties' concerns. The parties scheduled another negotiating session for December.

On December 22, 1998, the parties met in Milwaukee, Wisconsin. As a result of further discussions which took place at this meeting, the parties developed a draft negotiation concept paper. The parties, as well as EPA, agreed to seek concurrence from their respective boards and governing bodies. The parties agreed that sufficient progress had been made towards resolving the dispute to warrant another meeting in February 1999.

The parties held another dispute resolution meeting on the FCP Community reservation in Carter, Wisconsin on February 3, 1999. During this meeting, the parties developed specific language that they wished to include in a draft agreement in principle. After review by both parties, as well as by EPA, the lead negotiators for the State of Wisconsin, the FCP Community, and EPA signed the agreement, signifying their good faith intent to seek concurrence from their respective authorities and management. EPA was not a party to the dispute, and its role was to acknowledge the parties' agreement.

Following the development of the agreement in principle document, a drafting team comprised of representatives of the parties and from EPA began developing the detailed terms of the final agreement. On April 8, 1999, the parties held a meeting to work out the language of the final agreement. After each of the parties, as well as EPA, had an opportunity to review and comment on the draft of the final agreement, the parties agreed that another drafting session would be necessary. The parties, together with EPA, held a final conference call to complete the draft final agreement on June 7, 1999.

2. The FCP Community and the State of Wisconsin Memorandum of Agreement

The 1999 Memorandum of Agreement between the FCP Community and the State of Wisconsin (FCP Community-Wisconsin MOA) fully resolves the dispute between the state and the Tribe concerning the FCP Community's request for Class I redesignation of its reservation lands. The Class I Final Agreement provides a framework for establishing how the state and FCP Community will implement the Class I area under their respective authorities. The provisions of this agreement become effective upon EPA's final action to approve the FCP Community's request for Class I redesignation, as published in a separate final rule in the **Federal Register**. While EPA also was a signatory to this agreement, EPA's role in the process was to acknowledge the agreement entered into by the parties on their own respective authorities.

3. Effect of the FCP Community and State of Wisconsin Memorandum of Agreement on the Wisconsin State Implementation Plan (SIP)

CAA section 164(e) provides that ''the results of the agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.'' CAA section 164(e), 42 U.S.C. 7474(e). The PSD program is implemented in Wisconsin under an EPA approved State Implementation Plan (SIP) which excludes all of Indian country within the state. The terms of the FCP Community-Wisconsin MOA do not apply to the effects of the Class I redesignation on the redesignated area, and thus are not appropriate for inclusion in the Federal Implementation Plan (FIP) EPA is issuing in a concurrent rulemaking, located in this **Federal Register** publication. Rather, the agreement establishes certain special provisions regarding the effects of the Class I redesignation on potential sources outside the redesignated area. These provisions will need to be implemented by revising the Wisconsin SIP and have been summarized by EPA as follows in the December 18, 2006, **Federal Register** proposal:

> [T]he agreement between the FCP Community and Wisconsin subjects all major sources in Wisconsin located within a ten (10) mile radius of any redesignated Tribal land to performing an increment analysis and to meeting consumption requirements applicable to a Class I area. Major sources located outside of ten (10) miles are subject to increment analysis and consumption requirements applicable to any redesignated Tribal land as if it were a Class II area. Also under the agreement, all major sources within sixty-two (62) miles are subject to an analysis of their impact on AQRVs of the redesignated Tribal lands to determine if they will have an adverse impact on these AQRVs.

71 FR 75696. As these special provisions differ from Wisconsin's currently approved SIP for the PSD program, for this portion of the FCP Community-Wisconsin MOA to become enforceable will require revision of the Wisconsin SIP, which otherwise would not recognize a limitation of the area in which the Class I increment analysis must be conducted.

EPA takes the position that it generally will not interfere with the agreements reached between Tribes and states through the CAA's 164(e) dispute resolution process. However, to the extent that the agreement reached under the terms of the MOA allows for restricting the requirements normally associated with Class I areas, as these apply to sources located outside a 10-mile radius of the redesignated reservation lands, EPA takes the position that a revision of the Wisconsin SIP will be necessary to implement this provision to potential sources located outside boundaries of the redesignated parcels. In the absence of such modification to the Wisconsin SIP, the current PSD rules codified at 40 CFR Part 52 will apply to the FCP Community's Class I area as approved in EPA's final action published in this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur dioxides, Volatile organic compounds.

Dated: April 18, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–8970 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8542–3]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule—consistency update.

SUMMARY: EPA is finalizing the updates of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on November 16, 2007. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the

requirements for OCS sources for which the Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District are the designated COA. The intended effect of approving the requirements contained in ''Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources'' (December, 2007), ''South Coast Air Quality Management District Requirements Applicable to OCS Sources'' (Parts I, II and III) (December, 2007), and ''Ventura County Air Pollution Control District Requirements Applicable to OCS Sources'' (December, 2007) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This rule is effective on May 29, 2008.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 29, 2008.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, Air Division, U.S. EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

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I. Background

Throughout this document, the terms ''we'', ''us,'' and ''our'' refer to U.S. EPA.

On November 16, 2007 (72 FR 64563), EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD, South Coast AQMD, and Ventura County APCD. These requirements are being promulgated in response to the submittal of rules from these California air pollution control agencies. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comments

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number

2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009.

As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. 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 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare written statements, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million of more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. This rule does not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. 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 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 and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175.

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 final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, this rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this final rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective May 29, 2008.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2008. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: December 28, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ 40 CFR part 55 is amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, et seq.) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(F), (G) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, December 2007.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and Part III), December 2007.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* December 2007.

* * * * *

■ 3. Appendix A to CFR part 55 is amended by revising paragraphs (b)(6),

(7), and (8) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 01/20/05)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 04/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 03/17/05)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority To Construct or Permit To Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 6/1/07)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 04/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 09/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 01/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 04/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X from Boilers, Steam Generators and Process Heaters) (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 09/16/99)
Rule 353 Adhesives and Sealants (Adopted 08/19/99)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen From Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 370 Potential To Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1., and D. Only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 1301 Part 70—Operating Permits—General Information (Adopted 06/19/03)
Rule 1302 Part 70—Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70—Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70—Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70—Operating Permits—Enforcement (Adopted 11/09/93)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III):

Rule 102 Definition of Terms (Adopted 12/3/04)
Rule 103 Definition of Geographical Areas (Adopted 01/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 01/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 04/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 08/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice To Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/07/95)
Rule 201 Permit To Construct (Adopted 12/03/04)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 12/03/04)
Rule 202 Temporary Permit To Operate (Adopted 12/03/04)
Rule 203 Permit To Operate (Adopted 12/03/04)
Rule 204 Permit Conditions (Adopted 03/6/92)
Rule 205 Expiration of Permits To Construct (Adopted 01/05/90)
Rule 206 Posting of Permit To Operate (Adopted 01/05/90)
Rule 207 Altering or Falsifying of Permit (Adopted 01/09/76)
Rule 208 Permit and Burn Authorization for Open Burning (Adopted 12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 01/05/90)
Rule 210 Applications (Adopted 01/05/90)
Rule 212 Standards for Approving Permits (Adopted 12/07/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 01/05/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 01/05/90)
Rule 218 Continuous Emission Monitoring (Adopted 05/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 05/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 05/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 6/1/07)
Rule 220 Exemption—Net Increase in Emissions (Adopted 08/07/81)
Rule 221 Plans (Adopted 01/04/85)
Rule 301 Permitting and Associated Fees (Adopted 5/4/07) Except (e)(7) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/4/07)
Rule 304.1 Analyses Fees (Adopted 5/4/07)
Rule 305 Fees for Acid Deposition (Rescinded 6/9/06)
Rule 306 Plan Fees (Adopted 5/4/07)
Rule 309 Fees for Regulation XVI (Adopted 5/4/07)
Rule 401 Visible Emissions (Adopted 11/09/01)
Rule 403 Fugitive Dust (Adopted 06/03/05)
Rule 404 Particulate Matter—Concentration (Adopted 02/07/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 02/07/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 04/02/82)

Rule 408 Circumvention (Adopted 05/07/76)
Rule 409 Combustion Contaminants (Adopted 08/07/81)
Rule 429 Start-Up and Shutdown Exemption Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (b) Only (Adopted 07/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 06/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 09/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 05/7/76)
Rule 441 Research Operations (Adopted 05/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 05/06/05)
Rule 465 Refinery Vacuum-Producing Devices or Systems (Adopted 08/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/08/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 05/07/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/04/81)
Rule 475 Electric Power Generating Equipment (Adopted 08/07/78)
Rule 476 Steam Generating Equipment (Adopted 10/08/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/07/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 08/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 08/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 06/13/97)
Rule 702 Definitions (Adopted 07/11/80)
Rule 708 Plans (Rescinded 09/08/95)
Regulation IX Standard of Performance For New Stationary Sources (Adopted 4/6/07)
Reg. X National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 12/2/05)
Rule 1105.1 Reduction of PM_{10} And Ammonia Emissions From Fluid Catalytic Cracking Units (Adopted 11/07/03)
Rule 1106 Marine Coating Operations (Adopted 01/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 1/6/06)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 08/05/88)
Rule 1110 Emissions From Stationary Internal Combustion Engines (Demonstration) (Repealed 11/14/97)
Rule 1110.1 Emissions From Stationary Internal Combustion Engines (Rescinded 06/03/05)
Rule 1110.2 Emissions from Gaseous- and Liquid Fueled Engines (Adopted 06/03/05)
Rule 1113 Architectural Coatings (Adopted 6/9/06)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides From Residential-Type Natural Gas-Fired Water Heaters (Adopted 09/03/04)
Rule 1122 Solvent Degreasers (Adopted 10/01/04)
Rule 1123 Refinery Process Turnarounds (Adopted 12/07/90)
Rule 1125 Metal Container, Closure, and Coil Coating Operations (Adopted 01/13/95)
Rule 1129 Aerosol Coatings (Adopted 03/08/96)
Rule 1132 Further Control of VOC Emissions From High-Emitting Spray Booth Facilities (Adopted 5/5/06)
Rule 1134 Emissions of Oxides of Nitrogen From Stationary Gas Turbines (Adopted 08/08/97)
Rule 1136 Wood Products Coatings (Adopted 06/14/96)
Rule 1137 PM_{10} Emission Reductions From Woodworking Operations (Adopted 02/01/02)
Rule 1140 Abrasive Blasting (Adopted 08/02/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 07/19/91)
Rule 1146 Emissions of Oxides of Nitrogen From Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen From Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 05/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 5/5/06)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/05/82)
Rule 1149 Storage Tank Cleaning And Degassing (Adopted 07/14/95)
Rule 1162 Polyester Resin Operations (Adopted 7/8/05)
Rule 1168 Adhesive and Sealant Applications (Adopted 01/07/05)
Rule 1171 Solvent Cleaning Operations (Adopted 7/14/06)
Rule 1173 Control of Volatile Organic Compounds Leaks and Releases From Components at Petroleum Facilities and Chemical Plants (Adopted 6/1/07)
Rule 1176 VOC Emissions From Wastewater Systems (Adopted 09/13/96)
Rule 1178 Further Reductions of VOC Emissions From Storage Tanks at Petroleum Facilities (Adopted 4/7/06)
Rule 1301 General (Adopted 12/07/95)
Rule 1302 Definitions (Adopted 12/06/02)
Rule 1303 Requirements (Adopted 12/06/02)
Rule 1304 Exemptions (Adopted 06/14/96)
Rule 1306 Emission Calculations (Adopted 12/06/02)
Rule 1313 Permits To Operate (Adopted 12/07/95)
Rule 1403 Asbestos Emissions From Demolition/Renovation Activities (Adopted 11/3/06)
Rule 1470 Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines (Adopted 6/1/07)
Rule 1605 Credits for the Voluntary Repair of On-Road Motor Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 07/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 03/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 07/10/98)
Rule 1701 General (Adopted 08/13/99)
Rule 1702 Definitions (Adopted 08/13/99)
Rule 1703 PSD Analysis (Adopted 10/07/88)
Rule 1704 Exemptions (Adopted 08/13/99)
Rule 1706 Emission Calculations (Adopted 08/13/99)
Rule 1713 Source Obligation (Adopted 10/07/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 09/09/94)
Regulation XX Regional Clean Air Incentives Market (Reclaim)
Rule 2000 General (Adopted 05/06/05)
Rule 2001 Applicability (Adopted 05/06/05)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SOx) (Adopted 01/07/05)
Rule 2004 Requirements (Adopted 4/6/07) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 05/06/05) except (i)
Rule 2006 Permits (Adopted 05/11/01)
Rule 2007 Trading Requirements (Adopted 4/6/07)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2009 Compliance Plan for Power Producing Facilities (Adopted 01/07/05)
Rule 2010 Administrative Remedies and Sanctions (Adopted 4/6/07)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 05/06/05)
Appendix A Volume IV—(Protocol for Oxides of sulfur) (Adopted 05/06/05)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 05/06/05)
Appendix A Volume V—(Protocol for Oxides of Nitrogen) (Adopted 05/06/05)
Rule 2015 Backstop Provisions (Adopted 06/04/04) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 05/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 07/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 03/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 03/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/08/93)

Rule 3008 Potential To Emit Limitations (Adopted 03/16/01)
XXXI Acid Rain Permit Program (Adopted 02/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*:

Rule 2 Definitions (Adopted 04/13/04)
Rule 5 Effective Date (Adopted 04/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 06/14/77)
Rule 10 Permits Required (Adopted 04/13/04)
Rule 11 Definition for Regulation II (Adopted 03/14/06)
Rule 12 Applications for Permits (Adopted 06/13/95)
Rule 13 Action on Applications for an Authority To Construct (Adopted 06/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 06/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 06/13/95)
Rule 19 Posting of Permits (Adopted 05/23/72)
Rule 20 Transfer of Permit (Adopted 05/23/72)
Rule 23 Exemptions From Permits (Adopted 09/12/06)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review—General (Adopted 03/14/06)
Rule 26.1 New Source Review—Definitions (Adopted 11/14/06)
Rule 26.2 New Source Review—Requirements (Adopted 05/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 03/14/06)
Rule 26.6 New Source Review—Calculations (Adopted 03/14/06)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 01/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 05/14/02)
Rule 26.12 Federal Major Modifications (Adopted 06/27/06)
Rule 28 Revocation of Permits (Adopted 07/18/72)
Rule 29 Conditions on Permits (Adopted 03/14/06)
Rule 30 Permit Renewal (Adopted 04/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79)
Rule 33 Part 70 Permits—General (Adopted 09/12/06)
Rule 33.1 Part 70 Permits—Definitions (Adopted 09/12/06)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 09/12/06)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 03/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42 Permit Fees (Adopted 04/10/07)
Rule 44 Exemption Evaluation Fee (Adopted 09/10/96)
Rule 45 Plan Fees (Adopted 06/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 08/04/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50 Opacity (Adopted 04/13/04)
Rule 52 Particulate Matter—Concentration (Grain Loading)(Adopted 04/13/04)
Rule 53 Particulate Matter—Process Weight (Adopted 04/13/04)
Rule 54 Sulfur Compounds (Adopted 06/14/94)
Rule 56 Open Burning (Adopted 11/11/03)
Rule 57 Incinerators (Adopted 01/11/05)
Rule 57.1 Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)
Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
Rule 68 Carbon Monoxide (Adopted 04/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 09/13/05)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 09/13/05)
Rule 74 Specific Source Standards (Adopted 07/06/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-Water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_X (Adopted 04/09/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/11/03)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102 Source Tests (Adopted 04/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158 Source Abatement Plans (Adopted 09/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220 General Conformity (Adopted 05/09/95)
Rule 230 Notice To Comply (Adopted 11/09/99)

* * * * *

[FR Doc. E8–9092 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Henderson County, North Carolina, and Incorporated Areas Docket No.: FEMA–D–7808			
Allen Branch	At the confluence with Clear Creek	+2,081	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 200 feet upstream of Luther Capell Lane	+2,183	
Bat Fork Creek	At the confluence with Mud Creek	+2,082	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 200 feet upstream of U.S. 176	+2,159	
Battle Creek	At the downstream side of U.S. 64	+2,069	Unincorporated Areas of Henderson County.
	Approximately 0.4 mile upstream of Battle Creek Road (State Road 1211).	+2,082	
Big Willow Creek	Approximately 0.4 mile upstream of the confluence with French Broad River.	+2,081	Unincorporated Areas of Henderson County.
	At the confluence of South Fork Big Willow Creek and North Fork Big Willow Creek.	+2,081	
Big Willow Creek Tributary 1	Approximately 1,200 feet upstream of the confluence with Big Willow Creek.	+2,104	Unincorporated Areas of Henderson County.
	Approximately 40 feet upstream of Lakeshore Drive	+2,109	
Boylston Creek	Approximately 50 feet downstream of Banner Farm Road	+2,072	Town of Mills River.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 230 feet upstream of Turkey Pen Gap Road.	+2,190	
Boylston Creek Tributary 7	At the confluence with Boylston Creek	+2,103	Unincorporated Areas of Henderson County, Town of Mills River.
	Approximately 1,090 feet upstream of Cross Creek Court	+2,128	
Britton Creek	At the confluence with Mud Creek	+2,081	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 90 feet upstream of Mistletoe Trail	+2,284	
Britton Creek Tributary 2	At the confluence with Britton Creek	+2,082	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 150 feet upstream of Stonebrook Drive (State Road 2050).	+2,154	
Broad River	At the Henderson/Rutherford County boundary	+1,411	Unincorporated Areas of Henderson County.
	At the Buncombe/Henderson County boundary	+1,719	
Cane Creek	Approximately 100 feet upstream of I–26	+2,062	Unincorporated Areas of Henderson County, Town of Fletcher.
	Approximately 800 feet upstream of the Henderson/Buncombe County boundary.	+2,094	
Clear Creek	At the confluence with Mud Creek	+2,078	Unincorporated Areas of Henderson County.
	Approximately 1.0 mile upstream of Apple Valley Road (State Road 1572).	+2,171	
Devils Fork	At the confluence with Bat Fork Creek	+2,083	Unincorporated Areas of Henderson County, City of Hendersonville.
	At Old Dana Road (State Road 1738)	+2,135	
Dunn Creek	At the confluence with Bat Fork Creek	+2,099	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 570 feet upstream of Howard Gap Road (State Road 1006).	+2,144	
Featherstone Creek	At the confluence with Mud Creek	+2,069	Unincorporated Areas of Henderson County.
	Approximately 240 feet upstream of Locust Grove Road (State Road 1528).	+2,253	
Finley Creek	At the confluence with Shepherd Creek	+2,131	Unincorporated Areas of Henderson County.
	Approximately 1,980 feet upstream of Old Kanuga Road (State Road 1138).	+2,146	
Gash Creek	Approximately 400 feet downstream of Etowah School Road (State Road 1205).	+2,081	Unincorporated Areas of Henderson County.
	Approximately 1,250 feet upstream of U.S. 64	+2,101	
Green River	At the Henderson/Polk County boundary	+1,442	Unincorporated Areas of Henderson County.
	Approximately 300 feet upstream of Bear Paw Ridge Road.	+2,166	
Henderson Creek	At the confluence with Clear Creek	+2,118	Unincorporated Areas of Henderson County.
	Approximately 1,240 feet upstream of Pace Road (State Road 1726).	+2,146	
Hickory Creek (near Gerton)	At the confluence with Broad River	+1,483	Unincorporated Areas of Henderson County.
	Approximately 320 feet upstream of Boulder Lane	+3,652	
Higgins Branch	At the confluence with Kimsey Creek	+2,062	Town of Fletcher.
	Approximately 1,820 feet upstream of Birkshire Way	+2,178	
Hoopers Creek	At the confluence with Cane Creek	+2,074	Unincorporated Areas of Henderson County, Town of Fletcher.
	Approximately 30 feet downstream of Lindsey Loop Road (State Road 1571).	+2,181	
Kimsey Creek	Approximately 50 feet upstream of U.S. 74	+2,062	Unincorporated Areas of Henderson County, Town of Fletcher.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 1,880 feet upstream of Kimzey Creek Drive	+2,155	
King Creek	At the confluence with Bat Fork Creek	+2,084	Unincorporated Areas of Henderson County, City of Hendersonville, Village of Flat Rock.
	Approximately 0.5 mile upstream of West Blue Ridge Road (State Road 1812).	+2,178	
King Creek Tributary 3	At the confluence with King Creek	+2,099	Unincorporated Areas of Henderson County, City of Hendersonville, Village of Flat Rock.
	Approximately 210 feet upstream of Rutledge Drive (State Road 1166).	+2,171	
Kyles Creek	At the confluence with Clear Creek	+2,118	Unincorporated Areas of Henderson County.
	Approximately 140 feet downstream of Terrys Gap Road (State Road 1565).	+2,187	
Lanning Mill Creek	At the confluence with Kyles Creek	+2,176	Unincorporated Areas of Henderson County.
	Approximately 800 feet upstream of the confluence with Kyles Creek.	+2,187	
Lewis Creek	At the confluence with Clear Creek	+2,126	Unincorporated Areas of Henderson County.
	Approximately 80 feet downstream of Pilot Mountain Road (State Road 1783).	+2,169	
Little Willow Creek	At Pleasant Grove Road (State Road 1191)	+2,083	Unincorporated Areas of Henderson County.
	Approximately 1.6 miles upstream of the confluence with French Broad River.	+2,113	
Mill Pond Creek	Approximately 175 feet upstream of Hysong Lane	+2,075	Unincorporated Areas of Henderson County.
	Approximately 0.4 mile upstream of Mountain Road (State Road 1381).	+2,202	
Mills River	Approximately 0.6 mile upstream of Hooper Lane (State Road 1353).	+2,063	Town of Mills River.
	At the confluence of North Fork Mills River and South Fork Mills River.	+2,119	
Mud Creek	Approximately 1.4 miles upstream of the confluence with French Broad River.	+2,062	Unincorporated Areas of Henderson County, City of Hendersonville, Town of Fletcher, Village of Flat Rock.
	Approximately 300 feet upstream of Walnut Cove Road (State Road 1125).	+2,161	
North Fork Big Willow Creek	At the confluence with Big Willow Creek	+2,081	Unincorporated Areas of Henderson County.
	Approximately 0.5 mile upstream of the confluence with Big Willow Creek.	+2,099	
North Fork Mills River	At the confluence with Mills River	+2,119	Unincorporated Areas of Henderson County, Town of Mills River.
	Approximately 1.3 miles upstream of Rush Branch Road	+2,259	
Perry Creek	At the confluence with Shepherd Creek	+2,131	Unincorporated Areas of Henderson County.
	Approximately 1,530 feet upstream of Price Road (State Road 1137).	+2,147	
Piney Branch	At the confluence with South Fork Big Willow Creek	+2,082	Unincorporated Areas of Henderson County.
	Approximately 0.8 mile upstream of Big Willow Road (State Road 1191).	+2,218	
Reedypatch Creek	At the confluence with Broad River	+1,461	Unincorporated Areas of Henderson County.
	Approximately 540 feet upstream of Bald Rock Road (State Road 1710).	+2,176	
Rock Creek (into Green River)	At the confluence with Green River	+2,067	Unincorporated Areas of Henderson County.
	Approximately 0.5 mile upstream of Green River Road (State Road 1106).	+2,103	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Shaw Creek	At the downstream side of U.S. 64	+2,069	Unincorporated Areas of Henderson County.
	Approximately 1,400 feet upstream of Turley Falls Road (State Road 1215).	+2,122	
Shepherd Creek	At South Lakeside Drive (State Road 1148)	+2,126	Unincorporated Areas of Henderson County.
	At the confluence of Perry Creek and Finley Creek	+2,131	
South Fork Big Willow Creek	At the confluence with Big Willow Creek	+2,081	Unincorporated Areas of Henderson County.
	Approximately 1,810 feet upstream of Patterson Road (State Road 1194).	+2,103	
South Fork Mills River	At the confluence with Mills River	+2,119	Unincorporated Areas of Henderson County, Town of Mills River.
	Approximately 3.2 miles upstream of Dalton Road (State Road 1340).	+2,258	
South Wash Creek	At the confluence with Wash Creek	+2,153	Town of Laurel Park.
	Approximately 50 feet downstream of Lake Drive	+2,217	
Tonys Creek	At the confluence with Shepherd Creek	+2,126	Unincorporated Areas of Henderson County, Town of Laurel Park.
	Approximately 0.5 mile upstream of Willow Road (State Road 1171).	+2,201	
Wash Creek	Approximately 400 feet upstream of the confluence with Mud Creek.	+2,091	Unincorporated Areas of Henderson County, City of Hendersonville, Town of Laurel Park.
	Approximately 330 feet upstream of Railroad	+2,202	
Wolfpen Creek	Approximately 500 feet upstream of the confluence with Clear Creek.	+2,091	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 90 feet upstream of Chestnut Gap Road (State Road 1742).	+2,130	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Hendersonville
Maps are available for inspection at Hendersonville City Hall, 145 Fifth Avenue East, Hendersonville, North Carolina.

Town of Fletcher
Maps are available for inspection at Fletcher Town Hall, 4005 Hendersonville Road, Fletcher, North Carolina.

Town of Laurel Park
Maps are available for inspection at Laurel Park Town Hall, 441 White Pine Drive, Laurel Park, North Carolina.

Town of Mills River
Maps are available for inspection at Mills River Town Hall, 5046 Boylston Highway, Suite 3, Mills River, North Carolina.

Unincorporated Areas of Henderson County
Maps are available for inspection at Henderson County Administration Building, 100 North King Street, Hendersonville, North Carolina.

Village of Flat Rock
Maps are available for inspection at Flat Rock Village Hall, 110 Village Center Drive, Flat Rock, North Carolina.

McDowell County, North Carolina, and Incorporated Areas
Docket No.: FEMA–D–7668

Alexander Branch	At the confluence with South Muddy Creek	+1,137	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of the confluence with South Muddy Creek.	+1,174	
Armstrong Creek	At the confluence with North Fork Catawba River	+1,382	Unincorporated Areas of McDowell County.
	At the confluence of House Branch	+1,959	
Bakers Creek	At the confluence with Second Broad River	+1,026	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of the Railroad	+1,153	
Beaverdam Branch	At the confluence with Second Broad River	+1,270	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1148	+1,311	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Betsy Creek	At the confluence with Tom Creek	+1,442	Unincorporated Areas of McDowell County.
	Approximately 300 feet upstream of State Route 1434	+1,461	
Big Camp Creek	At the confluence with North Muddy Creek	+1,134	Unincorporated Areas of McDowell County.
	Approximately 370 feet downstream of Interstate 40	+1,197	
Bobs Creek	At the confluence with North Muddy Creek	+1,206	Unincorporated Areas of McDowell County.
	Approximately 1,050 feet upstream of State Route 1796	+1,219	
Boney Creek	At the confluence with Cove Creek	+1,137	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1143	+1,170	
Bradley Creek	At the confluence with Loom Branch	+1,420	Unincorporated Areas of McDowell County.
	Approximately 850 feet upstream of State Route 1133	+1,488	
Brevard Creek	At the confluence with Catawba River	+1,342	Unincorporated Areas of McDowell County.
	Approximately 1.4 miles upstream of State Route 1241	+1,472	
Buck Creek	At the confluence with Catawba River	+1,246	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of Sugar Cove Road	+1,883	
Caleb Branch	At the confluence with North Muddy Creek	+1,163	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1760	+1,224	
Camp Creek	At the confluence with Crooked Creek	+1,441	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1131	+1,535	
Cane Creek (near Dysartsville)	At the McDowell/Rutherford County boundary	+975	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the confluence of Shoal Creek.	+1,044	
Cane Creek (near Greenlee)	Approximately 500 feet upstream of the confluence with Catawba River.	+1,292	Unincorporated Areas of McDowell County.
	Approximately 250 feet upstream of U.S. Highway 70	+1,454	
Cane Creek Tributary 1 (near Dysartsville).	At the confluence with Cane Creek (near Dysartsville)	+1,037	Unincorporated Areas of McDowell County.
	Approximately 1,680 feet upstream of the confluence with Cane Creek (near Dysartsville).	+1,064	
Cane Creek Tributary 1 (near Greenlee).	At the confluence with Cane Creek (near Greenlee)	+1,332	Unincorporated Areas of McDowell County.
	Approximately 1,600 feet upstream of State Route 1230	+1,359	
Cane Creek Tributary 2 (near Greenlee).	At the confluence with Cane Creek (near Greenlee)	+1,418	Unincorporated Areas of McDowell County.
	Approximately 0.3 mile upstream of the confluence with Cane Creek (near Greenlee).	+1,458	
Catawba River	At the Burke/McDowell County boundary	+1,206	Unincorporated Areas of McDowell County, City of Marion, Town of Old Fort.
	Approximately 1.6 miles upstream of the confluence of Left Prong Catawba River.	+1,832	
Catawba River Tributary 3	At the confluence with Catawba River	+1,269	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the confluence with Catawba River.	+1,281	
Clarks Branch	At the confluence with Little Crooked Creek	+1,476	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of State Route 1106	+1,504	
Clear Creek	At the confluence with Catawba River	+1,267	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of the confluence with Catawba River.	+1,285	
Conley Branch	At the confluence with North Fork Catawba River	+1,402	Unincorporated Areas of McDowell County.
	Approximately 1,850 feet upstream of the confluence with Conley Branch Tributary 1.	+1,441	
Conley Branch Tributary 1	At the confluence with Conley Branch	+1,419	Unincorporated Areas of McDowell County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 0.4 mile upstream of the confluence with Conley Branch.	+1,443	
Cove Creek	Approximately 400 feet downstream of McDowell/Rutherford County boundary.	+1,128	Unincorporated Areas of McDowell County.
	At the confluences of West Fork Cove Creek and Morgan Creek (near Sugar Hill).	+1,196	
Cox Creek	At the confluence with Armstrong Creek	+1,418	Unincorporated Areas of McDowell County.
	Approximately 250 feet upstream of the confluence of Rag Creek.	+1,528	
Crooked Creek	At the confluence with Catawba River	+1,321	Unincorporated Areas of McDowell County.
	Approximately 620 feet upstream of State Route 1100	+1,845	
Curtis Creek	At the confluence with Catawba River	+1,375	Unincorporated Areas of McDowell County, Town of Old Fort.
	Approximately 1,850 feet upstream of the confluence of Hickory Branch.	+1,926	
Dales Creek	At the confluence with Catawba River/Lake James	+1,206	Unincorporated Areas of McDowell County.
	Approximately 1.0 mile upstream of State Route 1552	+1,386	
Frasheur Creek	At the McDowell/Rutherford County boundary	+1,152	Unincorporated Areas of McDowell County.
	Approximately 0.7 mile upstream of State Route 1140	+1,223	
Glades Creek	At the confluence with Catawba River	+1,300	Unincorporated Areas of McDowell County.
	Approximately 400 feet upstream of State Route 1161	+1,450	
Goose Creek	At the confluence with North Muddy Creek	+1,227	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 147	+1,306	
Greasy Creek	Approximately 400 feet downstream of County boundary	+1,148	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1142	+1,198	
Harris Creek (near Sugar Hill)	At the confluence with Cove Creek	+1,132	Unincorporated Areas of McDowell County.
	Approximately 1,400 feet upstream of State Route 1140	+1,168	
Harris Creek (near Woodlawn)	At the confluence with Tom Creek	+1,606	Unincorporated Areas of McDowell County.
	Approximately 850 feet upstream of the confluence with Tom Creek.	+1,636	
Haw Branch	At the confluence with Crooked Creek	+1,379	Unincorporated Areas of McDowell County.
	Approximately 1,600 feet upstream of State Route 1135	+1,432	
Hicks Branch	At the confluence with North Muddy Creek	+1,254	Unincorporated Areas of McDowell County.
	Approximately 1,800 feet upstream of State Route 1168	+1,322	
High Shoals Creek	At the confluence with South Muddy Creek	+1,218	Unincorporated Areas of McDowell County.
	Approximately 200 feet upstream of the confluence of Barnes Branch.	+1,225	
Honeycutt Creek	At the confluence with North Fork Catawba River	+1,487	Unincorporated Areas of McDowell County.
	Approximately 340 feet downstream of the Railroad	+1,854	
Hoppers Creek	At the confluence with South Muddy Creek	+1,118	Unincorporated Areas of McDowell County.
	Approximately 1.7 miles upstream of State Highway 226	+1,201	
Jackson Creek	At the confluence with Lytle Branch	+1,492	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the confluence with Lytle Branch.	+1,534	
Jake Creek	At the upstream side of the Railroad	+1,283	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1247	+1,346	
Jarrett Creek	At the confluence with Mill Creek	+1,474	Unincorporated Areas of McDowell County.
	Approximately 2.6 miles upstream of the confluence with Mill Creek.	+1,791	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Johns Creek	At the confluence with Catawba River	+1,214	Unincorporated Areas of McDowell County.
	Approximately 1,600 feet upstream of State Route 1501 ..	+1,228	
Katy Creek	At the confluence with South Muddy Creek	+1,150	Unincorporated Areas of McDowell County.
	Approximately 1,100 feet upstream of State Route 1798 ..	+1,252	
Left Prong Catawba River	At the confluence with Catawba River	+1,527	Unincorporated Areas of McDowell County.
	Approximately 2.0 miles upstream of the confluence with Catawba River.	+1,739	
Licklog Creek	At the confluence with Buck Creek	+1,777	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of the confluence with Buck Creek.	+2,064	
Little Buck Creek	At the confluence with Buck Creek/Lake Tahoma	+1,407	Unincorporated Areas of McDowell County.
	Approximately 200 feet downstream of the confluence of Long Branch.	+1,512	
Little Crooked Creek	At the confluence with Crooked Creek	+1,450	Unincorporated Areas of McDowell County.
	Approximately 100 feet downstream of State Route 1106	+1,536	
Little Crooked Creek Tributary 1	At the confluence with Little Crooked Creek	+1,461	Unincorporated Areas of McDowell County.
	Approximately 1,470 feet upstream of the confluence with Little Crooked Creek.	+1,469	
Little Toe River	At the confluence with Crooked Creek	+1,388	Unincorporated Areas of McDowell County.
	Approximately 25 feet upstream of State Route 1240	+1,478	
Lonan Branch	At the confluence with Pepper Creek	+1,536	Unincorporated Areas of McDowell County.
	Approximately 1,500 feet upstream of the confluence with Pepper Creek.	+1,581	
Long Branch	At the confluence with Mill Creek	+1,816	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the Railroad	+1,953	
Loom Branch	At the confluence with Crooked Creek	+1,415	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of the confluence of Bradley Creek.	+1,488	
Lytle Branch	At the confluence with Crooked Creek	+1,487	Unincorporated Areas of McDowell County.
	Approximately 1,100 feet upstream of State Route 1103 ..	+1,525	
Mackey Creek	At the confluence with the Catawba River	+1,284	Unincorporated Areas of McDowell County.
	Approximately 2.8 miles upstream of U.S. Highway 70	+1,721	
Magazine Branch	At the confluence with Hoppers Creek	+1,145	Unincorporated Areas of McDowell County.
	Approximately 200 feet downstream of State Route 1771	+1,162	
Martin Branch	At the confluence with North Fork Catawba River	+1,435	Unincorporated Areas of McDowell County.
	Approximately 350 feet upstream of State Route 1564	+1,469	
Mill Creek	Approximately 200 feet upstream of the confluence with Catawba River.	+1,410	Unincorporated Areas of McDowell County, Town of Old Fort.
	Approximately 300 feet downstream of State Route 1408	+1,874	
Mollys Branch	At the confluence with Hoppers Creek	+1,129	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1769	+1,170	
Morgan Creek (near Ledbetter Mountain).	At the confluence with Cove Creek	+1,173	Unincorporated Areas of McDowell County.
	Approximately 1,270 feet upstream of the confluence with Cove Creek.	+1,180	
Morgan Creek (near Sugar Hill)	At the confluence with Cove Creek and West Fork Cove Creek.	+1,196	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of the confluence with Cove Creek and West Fork Cove Creek.	+1,217	
Muddy Creek	Approximately 400 feet downstream of the Burke/McDowell County boundary.	+1,087	Unincorporated Areas of McDowell County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	At the confluences of North Muddy Creek and South Muddy Creek.	+1,089	
Newberry Creek	At the confluence with Curtis Creek	+1,670	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of the confluence with Curtis Creek.	+1,923	
Nicks Creek	At the confluence with Catawba River	+1,240	Unincorporated Areas of McDowell County, City of Marion.
	Approximately 0.5 mile upstream of State Route 1250	+1,447	
North Fork Catawba River	At the confluence with Catawba River/Lake James	+1,206	Unincorporated Areas of McDowell County.
	Approximately 1.9 miles upstream of State Route 1571	+2,506	
North Muddy Creek	At the confluence with Muddy Creek and South Muddy Creek.	+1,089	Unincorporated Areas of McDowell County.
	Approximately 1.1 miles upstream of the confluence of North Muddy Creek Tributary 2.	+1,326	
North Muddy Creek Tributary 2	At the confluence with North Muddy Creek	+1,297	Unincorporated Areas of McDowell County.
	Approximately 1.0 mile upstream of State Route 1168	+1,327	
North Muddy Creek Tributary 1	At the confluence with North Muddy Creek	+1,094	Unincorporated Areas of McDowell County.
	Approximately 1,000 feet upstream of State Route 1763	+1,132	
Old Catawba River	At the confluence of Shadrick Creek	+1,091	Unincorporated Areas of McDowell County.
	Approximately 500 feet upstream of the confluence of Shadrick Creek.	+1,091	
Patten Branch	At the confluence with South Muddy Creek	+1,101	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1763	+1,142	
Pepper Creek	At the confluence with North Fork Catawba River	+1,446	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1566	+1,674	
Rock Creek	At the confluence with Second Broad River	+1,290	Unincorporated Areas of McDowell County.
	At the downstream side of State Route 1145	+1,365	
Second Broad River	At the McDowell/Rutherford County boundary	+990	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of State Route 1001	+1,369	
Shadrick Creek	At the confluence with Old Catawba River	+1,091	Unincorporated Areas of McDowell County.
	Approximately 2.1 miles upstream of the Railroad	+1,194	
Shoal Creek	At the confluence with Cane Creek (near Dysartsville)	+1,028	Unincorporated Areas of McDowell County.
	Approximately 1.2 miles upstream of State Route 1775	+1,345	
South Fork Tom Creek	At the confluence with Tom Creek	+1,456	Unincorporated Areas of McDowell County.
	Approximately 0.3 mile upstream of the confluence with Tom Creek.	+1,489	
South Muddy Creek	At the confluence with Muddy Creek and North Muddy Creek.	+1,089	Unincorporated Areas of McDowell County.
	Approximately 0.7 mile upstream of State Route 1780	+1,331	
South Muddy Creek Tributary 1	At the confluence with South Muddy Creek	+1,107	Unincorporated Areas of McDowell County.
	At the Burke/McDowell County boundary	+1,124	
South Muddy Creek Tributary 2	At the confluence with South Muddy Creek	+1,123	Unincorporated Areas of McDowell County.
	Approximately 600 feet upstream of State Route 1767	+1,143	
Stanfords Creek	At the confluence with Goose Creek	+1,239	Unincorporated Areas of McDowell County.
	Approximately 2.1 miles upstream of the confluence with Goose Creek.	+1,346	
Swannanoa Creek	At the confluence with Mill Creek	+1,603	Unincorporated Areas of McDowell County.
	Approximately 0.7 mile upstream of the confluence with Mill Creek.	+1,702	
Thompsons Fork	At the confluence with North Muddy Creek	+1,101	Unincorporated Areas of McDowell County.
	Approximately 200 feet downstream of State Route 1747	+1,181	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Tom Creek	At the confluence with Catawba River	+1,229	Unincorporated Areas of McDowell County.
	Approximately 280 feet upstream of State Route 1440	+1,637	
Tom Creek Tributary 1	At the confluence with Tom Creek	+1,418	Unincorporated Areas of McDowell County.
	Approximately 1,300 feet upstream of State Route 1433	+1,488	
Walton Crowley Branch	At the confluence with North Muddy Creek	+1,119	Unincorporated Areas of McDowell County.
	Approximately 1,230 feet upstream of State Route 1760	+1,139	
West Fork Cove Creek	At the confluence with Cove Creek and Morgan Creek (near Sugar Hill).	+1,197	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of State Route 1001	+1,259	
Youngs Fork	At the confluence with North Muddy Creek	+1,205	Unincorporated Areas of McDowell County, City of Marion.
	Approximately 125 feet downstream of Glenview Street	+1,327 HELP	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Marion
Maps available for inspection at the Marion City Hall, 194 North Main Street, Marion, North Carolina.

Town of Old Fort
Maps available for inspection at the Old Fort Town Hall, 38 South Catawba Avenue, Old Fort, North Carolina.

Unincorporated Areas of McDowell County
Maps available for inspection at the McDowell County Administration Building, 60 East Court Street, Marion, North Carolina.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 18, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–9225 Filed 4–28–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625–7696–02]

RIN 0648–XH32

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 28,045 lb (12,721 kg) of commercial summer flounder quota to the Commonwealth of Virginia from its 2008 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective April 24, 2008, through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 28,045 lb (12,721 kg) of its 2008 commercial quota to Virginia to cover the summer flounder landings of four North Carolina vessels granted safe harbor in Virginia due to winter storm conditions between January 3 and March 31, 2008. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2008 are: North Carolina, 2,530,479 lb (1,147,806 kg); and Virginia, 2,015,211 lb (914,084 kg).

Classification

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

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

Dated: April 23, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1195 Filed 4–24–08; 1:56 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0401120010–4114–02]

RIN 0648–XH45

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

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

ACTION: Temporary rule; reduction of landing limit.

SUMMARY: NMFS announces a decrease in the Georges Bank (GB) yellowtail flounder trip limit to 5,000 lb (2,268 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to prevent over-harvesting of the total allowable catch (TAC) for GB yellowtail flounder during the 2008 fishing year. This action is being taken to maintain opportunities for vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective May 1, 2008, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2008 fishing year (May 1, 2008 - April 30, 2009) was set at 1,950 mt (73 FR 16572, March 28, 2008), a 217–percent increase from the TAC for the 2007 fishing year.

The regulations at § 648.85(b)(3)(iv)(C) specify the initial GB yellowtail flounder for each fishing year at 10,000 lb (4,536 kg) per trip. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. Despite the substantially larger 2008 TAC for GB yellowtail flounder, projections of harvest rates in the fishery indicate that the current trip limit of 10,000 lb (4,536kg) per trip could still result in the over-harvest of the GB yellowtail flounder TAC before the end of the 2008 fishing year. The regulations at § 648.85(a)(3)(iv)(C)(*3*) state that when 100 percent of the GB yellowtail flounder TAC is projected to be harvested, NMFS shall close the Eastern U.S./Canada Area to NE multispecies DAS vessels and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area. Therefore, any closure resulting from exceeding the GB yellowtail flounder TAC would unnecessarily reduce opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area. Based upon this information, NMFS is decreasing the current 10,000–lb (4,536 kg) trip limit in the U.S./Canada Management Area to 5,000 lb (2,268 kg), effective May 1, 2008, through April 30, 2009. This will allow for the fishery in the Eastern U.S./Canada Area to remain open longer and increase the opportunities to target Eastern GB cod and haddock during the 2008 fishing year. Any NE multispecies DAS vessels that have declared into the U.S./Canada Management Area, departed on a trip, and crossed the VMS demarcation line to start their trip prior to 12:01 AM on May 1, 2008, may possess and land up to 10,000 lb (4,536 kg) of GB yellowtail flounder on that trip only.

GB yellowtail flounder landings will be closely monitored through the Vessel Monitoring System (VMS) and other available information. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, the Eastern U.S./Canada Area will close to all limited access NE multispecies DAS vessels, and all vessels will be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area for the remainder of the fishing year. Conversely, if the TAC is projected to be under-harvested by the end of the fishing year, in-season adjustments to increase the trip limit may be considered.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations under § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the TAC allocation. Based upon recent projections, even though the 2008 GB yellowtail flounder TAC is substantially larger than the 2007 TAC, a trip limit of 10,000 lb (4,536 kg) would likely cause the 2008 GB yellowtail flounder TAC to be exceeded before August. These projections were not completed in sufficient time to allow for a proposed rule. Therefore, during the time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action, vessels would be able to land GB yellowtail flounder at a rate which would likely result in the full harvest of the 2008 GB yellowtail flounder TAC prior to the end of the 2008 fishing year. This would necessitate the premature closure of the Eastern U.S./Canada Area and a prohibition on the retention of GB yellowtail flounder in the entire U.S./Canada Management Area, thereby preventing the Agency from meeting its obligation to ensure that full opportunity is provided to harvest the 2008 U.S./Canada Management Area TACs for GB cod, haddock, and yellowtail flounder at a level that approaches optimum yield. Further, over-harvesting the GB yellowtail TAC would result in an overage deduction in fishing year 2009, and increase economic impacts to the industry and social impacts beyond those analyzed for Amendment 13. Exceeding the 2008 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13 and Framework Adjustment 42, resulting in decreased revenue for the NE multispecies fishery, increased negative

economic impacts to vessels operating in the U.S./Canada Management Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

The rate of harvest of the GB yellowtail flounder TAC in the U.S./Canada Management Area is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for GB yellowtail flounder, as well as Eastern GB cod and haddock, during the 2008 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13 and Framework 42 to the NE Multispecies FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: April 24, 2008.

Emily H. Menashes,

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

[FR Doc. E8–9383 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 83
Tuesday, April 29, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0416; Directorate Identifier 2007–NM–297–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found the occurrence of cable guard pins not installed in the aileron control system, which may lead to jamming of the aileron control cables, reducing the aircraft controllability.

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

DATES: We must receive comments on this proposed AD by May 29, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0416; Directorate Identifier 2007–NM–297–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2006–07–01, effective July 31, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of cable guard pins not installed in the aileron control system, which may lead to jamming of the aileron control cables, reducing the aircraft controllability.

The corrective actions include inspecting for possible absence of the cable guard pins in the aileron control system inside the wings, and installing new ones bearing the same part number. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–27–0023, dated January 24, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **NOTE** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry. We also estimate that it would take

about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,080, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–0416; Directorate Identifier 2007–NM–297–AD.

Comments Due Date

(a) We must receive comments by May 29, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category, serial numbers 145363, 145412, 145462, 145484, 145495, 145505, 145516, 145528, 145540, 145549, 145555, 145586, 145591, 145625, 145637, 145642, 145644, 145678, 145686, 145699, 145706, 145711, 145717, 145730, 145770, 145775, 145780, 145789, 145796, 14500802, and 14500809.

Subject

(d) *Air Transport Association (ATA) of America Code 27:* Flight Controls.

Reason

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

It has been found the occurrence of cable guard pins not installed in the aileron control system, which may lead to jamming of the aileron control cables, reducing the aircraft controllability.

The corrective actions include inspecting for possible absence of the cable guard pins in the aileron control system inside the wings, and installing new ones bearing the same part number.

Actions and Compliance

(f) Within 270 calendar days after the effective date of this AD, unless already done, do the following actions.

(1) Do a detailed inspection with the aid of a borescope for possible absence of the cable guard pins in the aileron control system inside the wings.

(i) If any cable guard pin having part number (P/N) NAS427K8, NAS427K28, or NAS427K36 is missing in the internal part of the left and right halfwing spar boxes, before further flight, install a new one bearing the same part number, in accordance with EMBRAER Service Bulletin 145LEG–27–0023, dated January 24, 2006.

(ii) If any cable guard pin P/N NAS427K26 is missing in the aileron control cable pulleys in the internal part of the wing leading edge III, before further flight, remove the corresponding leading edge and install a new cable guard pin bearing the same part number, in accordance with EMBRAER Service Bulletin 145LEG–27–0023, dated January 24, 2006.

FAA AD Differences

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

The MCAI includes airplanes in addition to those specified in the applicability of this AD. Those airplanes are not included in this AD because they are modified by Supplemental Type Certificates (STC) that are not FAA-approved. This AD includes only the U.S. certified airplanes identified in the referenced service information.

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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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 ensure 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 Brazilian Airworthiness Directive 2006–07–01, effective July 31, 2006; and EMBRAER Service Bulletin 145LEG–27–0023, dated January 24, 2006; for related information.

Issued in Renton, Washington, on April 18, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9313 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0483; Directorate Identifier 2008–NM–006–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found the occurrence of smoke in the flight deck originated from Pitot 1/2 and TAT 1/2 current sensor relays and [their] respective sockets, caused by poor electrical contacts between those relays and their sockets.

The unsafe condition is that smoke in the flight deck may interfere with the flightcrew's ability to operate the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 29, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0483; Directorate Identifier 2008–NM–006–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–11–04R1, effective December 21, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of smoke in the flight deck originated from Pitot 1/2 and TAT 1/2 current sensor relays and [their] respective sockets, caused by poor electrical contacts between those relays and their sockets.

The unsafe condition is that smoke in the flight deck may interfere with the flightcrew's ability to operate the airplane. Corrective actions include inspecting for damage of the Pitot 1 and 2 and TAT 1 and 2 current sensor relays and sockets; and, as applicable, replacing the A1 and C1 electrical contacts of the sockets and reidentifying the sockets, replacing the sockets, and replacing current sensor relays. Damage may include melted points or stuck material of the silicone gasket, incorrect shape of the current sensor relay/sockets, discoloration of contacts, loose pin-type contacts, cracking or loose material of the polish and sealant of the bases, contaminants of the current sensor relays/sockets, and stuck material or roughness of the surface of the current sensor relay/pin-type contact. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Service Bulletin 145–30–0052, dated August 2, 2007; and Service Bulletin 145LEG–30–0019, dated August 28, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 704 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of

this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $450,560, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–0483; Directorate Identifier 2008–NM–006–AD.

Comments Due Date

(a) We must receive comments by May 29, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Embraer Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; having serial numbers 145002 through 145362, 145364 through 145590, and 145592 through 14500987.

Subject

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

Reason

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

It has been found the occurrence of smoke in the flight deck originated from Pitot 1/2 and TAT 1/2 current sensor relays and [their] respective sockets, caused by poor electrical contacts between those relays and their sockets.

The unsafe condition is that smoke in the flight deck may interfere with the flightcrew's ability to operate the airplane. Corrective actions include inspecting for damage of the Pitot 1 and 2 and TAT 1 and 2 current sensor relays and sockets; and, as applicable, replacing the A1 and C1 electrical contacts of the sockets and reidentifying the sockets, replacing the sockets, and replacing current sensor relays. Damage may include melted points or stuck material of the silicone gasket, incorrect shape of the current sensor relay/sockets, discoloration of contacts, loose pin-type contacts, cracking or loose material of the polish and sealant of the bases, contaminants of the current sensor relays/sockets, and stuck material or roughness of the surface of the current sensor relay/pin-type contact.

Actions and Compliance

(f) Within 2,500 flight hours or 24 months after the effective date of this AD, whichever occurs first, unless already done, do the following actions in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0052, dated August 2, 2007; or Service Bulletin 145LEG–30–0019, dated August 28, 2007; as applicable. Do all applicable replacements and re-identification before further flight.

(1) Perform a detailed inspection of the Pitot 1 (K0053), Pitot 2 (K0054), TAT 1 (K0064), and TAT 2 (K0494) current sensor relays for possible damage caused by overheating in their contacts, enclosure, and finishing material.

(i) If no damage is found on a current sensor relay, that relay may be reinstalled.

(ii) If any damage is found on a current sensor relay, replace the relay with a new relay having the same part number (P/N) CS500–060–D4A.

(2) Perform a detailed inspection on the Pitot 1 (XK0053), Pitot 2 (XK0054), TAT 1 (XK0064), and TAT 2 (XK0494) relay sockets for possible damage caused by overheating in their contacts, enclosure, and finishing material.

(i) If no damage is found on a socket, replace electrical contacts A1 and C1 of the socket with new contacts having P/N M39029/92–536; re-identify the socket from P/N S500–9140 to S500–9140–A; and re-identify the socket electrical code from XK0053, XK0054, XK0064, and XK0494, to XK1243, XK1242, XK1245, and XK1244, respectively.

(ii) If any damage is found on a socket, replace the socket with a new socket having P/N S500–9140–A or S500–9216.

Note 1: For the purpose of this AD, a detailed inspection (DET) is: ''An intensive examination of a specific item, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate access procedures may be required.''

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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 Brazilian Airworthiness Directive 2007–11–04R1, effective December 21, 2007; Embraer Service Bulletin 145–30–0052, dated August 2, 2007; and Embraer Service Bulletin 145LEG–30–0019, dated August 28, 2007; for related information.

Issued in Renton, Washington, on April 18, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9315 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0419; Airspace Docket No. 08–ANM–3]

RIN 2120–AA66

Proposed Establishment of Low Altitude Area Navigation Routes (T-Routes); Southwest Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a low altitude Area Navigation (RNAV) route, designated T–276 in the Southwest Oregon. T-routes are low altitude Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The FAA is proposing this action to reduce controller workload, enhance safety and improve the efficient use of the navigable airspace in the Portland, OR, terminal area.

DATES: Comments must be received on or before June 13, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2008–0419 and Airspace Docket No. 08-ANM–3 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–0419 and Airspace Docket No. 08–ANM–3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–0419 and Airspace Docket No. 08–ANM–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, 15000 SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Low Altitude RNAV Route Identification and Charting

Low altitude RNAV routes are identified by the letter ''T'' prefix followed by a three digit number. The ''T'' prefix is one of several International Civil Aviation Organization designators used to identify domestic RNAV routes. The FAA has been allocated the letter ''T'' prefix and the number block 200 to 500 for use in naming these routes. The FAA uses the ''T'' prefix for RNAV routes in the low altitude en route structure of the National Airspace System.

T-routes are depicted in blue on the appropriate IFR en route low altitude chart(s). Each route depiction includes a GNSS minimum en route altitude to ensure obstacle clearance and communications reception.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish a low altitude RNAV route in the Portland, OR, terminal area. The route would be designated T–276, and would be depicted on the appropriate IFR En Route Low Altitude charts. T-routes are low altitude RNAV ATS routes, similar to Very High Frequency Omnidirectional Range Federal airways, but based on GNSS navigation. RNAV-equipped aircraft capable of filing flight plan equipment suffix ''G'' may file for these routes.

The T-route described in this notice is being proposed to enhance safety, and to facilitate the more flexible and efficient use of the navigable airspace for en route IFR operations transitioning through and around the Portland Terminal Area.

Low altitude RNAV routes are published in paragraph 6011 of FAA

Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 proposed 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 establishes a RNAV T-Route in Southwest Oregon.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b, and 311k. 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–276 COUGA, OR to CARBY, OR [New]

COUGA WP
(Lat. 46°05′31″ N., long. 122°40′39″ W.)
CARBY WP
(Lat. 45°44′06″ N., long. 121°55′32″ W.)

* * * * *

Issued in Washington, DC, on April 18, 2008.

Stephen L. Rohring,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–9245 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385

[Docket No. RM01–5–000]

Electronic Tariff Filings

Issued April 17, 2008.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its previous Notice of Proposed Rulemaking for electronic tariff filing. The revised proposal would require that all tariffs and tariff revisions and rate change applications for the public utility, natural gas pipeline, and oil pipeline industries be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board. These standards will enable the Commission to develop a tariff database for use by the Commission staff, the industry, and the public to view and research tariffs, and also provides companies the flexibility to design or purchase software for making tariff filings that best fits their business needs. Upon the effective date of a final rule in this proceeding, the Commission will no longer accept tariff filings submitted in paper format.

DATES: Comments are due May 29, 2008.

ADDRESSES: You may submit comments, identified by docket number, by any of the following methods:

- *Agency Web Site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8525, *Keith.Pierce@ferc.gov.*

Anthony Barracchini (IT Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8940, *Anthony.Barracchini@ferc.gov.*

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8560, *Andre.Goodson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Supplemental Notice of Proposed Rulemaking

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1. In a Notice of Proposed Rulemaking (NOPR) issued on July 8, 2004, the Commission proposed to require public utilities and gas and oil pipelines to file tariff and tariff related material electronically.[1] The Commission's initial proposal contemplated that tariff filings would be made using electronic tariff filing software developed by the Commission. Based on the comments on the initial proposal, the Commission staff in collaboration with the wholesale electric and gas quadrants of the North American Energy Standards Board (NAESB), and representatives from the Association of Oil Pipelines (AOPL) have developed a set of standards to be used by companies in making tariff and tariff related filings at the Commission. The Commission is proposing to adopt those standards as the requirement for making tariff and tariff related filings. As a result of the adoption of these standards, and additional considerations raised in the comments at NAESB, the Commission is proposing several revisions to the manner in which companies will make tariff and tariff related filings.

I. Background

2. In the 2004 NOPR, the Commission proposed to require public utilities, power administrations, interstate and intrastate gas pipelines, and oil pipelines to file tariff and tariff related material electronically. The Commission proposed to develop an electronic tariff database to store tariff and tariff related information for retrieval by Commission staff and the public. In order to implement a tariff database system that would permit such functionality, Commission staff developed a software system for tariff filings similar to that used in filing forms with the Commission. Commission staff worked with many industry representatives and experts to test this software and held public meetings to demonstrate and receive comment on the software. Based on these efforts, the Commission, in the 2005 Notice, proposed two changes to the 2004 NOPR intended to ease utilities' burdens in complying and to expand the efficiency of the electronic filing process.

3. Comments were filed on the proposed changes to the regulations and the software.[2] While some of the commenters supported using the Commission-provided software as an acceptable solution, others were concerned that this software might not work well for making tariff filings. Some also were concerned that the Commission software would not integrate well with their existing tariff management systems and that formatting tariffs to fit the parameters of the software could be difficult or time consuming.

4. As a result of the review of the comments, on February 1, 2007, a public meeting was held with NAESB to discuss NAESB's assistance in the process of developing the protocols, standards, and data formats needed to provide tariff and related data to enable the Commission to develop a database to track electronic tariff and rate schedules filings. At the meeting, NAESB agreed to develop these standards and report back to the Commission.

5. NAESB established two committees, a business eTariff Subcommittee and an eTariff Technical Task Force. These committees included representatives from the wholesale natural gas industry, wholesale electric

[1] Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43,929 (July 23, 2004) FERC Stats. & Regs., Proposed Regulations ¶ 32,575 (2004) (2004 NOPR), Notice of Additional Proposals and Procedures, 70 FR 40941 (July 15, 2005), FERC Stats. & Regs., Proposed Regulations ¶ 35,551 (2005), 112 FERC ¶ 61,043 (2005 Notice).

[2] Comments on the proposed changes and the software were due August 1, 2005 and May 31, 2006, respectively.

industry, oil pipelines, and intrastate natural gas pipelines who worked along with Commission staff to develop the applicable standards. Between February 1, 2007 and January 23, 2008, these committees held a total of 16 meetings in various cities over 24 days. An average of 61 people participated in these meetings either in person or by electronic conferencing. The Executive Committees for both the Wholesale Gas and Wholesale Electric Quadrants of NAESB approved the standards on March 4, 2008, and the NAESB membership ratified the standards on April 4, 2008.

6. On April 15, 2008, NAESB filed the standards with the Commission along with a record of the NAESB proceedings. This material included questions about the policies to be followed in using the standards to make tariff filings. NAESB also provided a copyright waiver stating: ''While the eTariff standards are copyrighted by NAESB, a limited waiver is granted to the FERC to modify and post any excerpts of the eTariff standards and eTariff work products that they deem appropriate. These excerpts will be available for companies to reproduce only for their own internal use.''

II. Discussion

7. We want to thank NAESB, and its Board of Directors, for taking on this somewhat out of the ordinary project of working with the Commission staff to develop standards for tariff filings with the Commission. We particularly want to thank the numerous volunteers, and the companies who sponsored them, from the gas, electric, and oil industries who spent countless hours developing the business and technical standards as well as evaluating how the standards could be used to make a broad array of different filings. The meetings provided a valuable opportunity for the exchange of ideas and concerns among the industries and Commission staff. As a result, we are proposing to revise our regulations and procedures to accommodate the way industry maintains tariffs. We believe that the protocols and standards that have been developed will provide a robust framework for the filing of tariff and tariff related materials with the Commission and the development of a Commission database to enable staff, industry, and the public to access and search those data.

8. With the advent of eFiling 7.0, the Commission has been expanding its ability to receive electronic filings through its eFiling and eLibrary systems. While eLibrary works very well as a document repository that stores, and permits retrieval of, all documents filed in individual docketed proceedings, it is not well suited to the processing of tariff and tariff related filings. Tariff filings occur in many different dockets over time, and in order for the Commission and the public to obtain a complete picture of a company's tariff, these various provisions need to be integrated into a single system that will provide information as to the status of tariff provisions, permit the assembly of a complete tariff, and permit tariff related research. Prior to the advent of electronic filing, the Commission would keep tariff books, open to the public, in which new pages would be inserted to reflect revisions and ensure that the tariff reflects the currently effective tariff.[3] The provision of an electronic database of company tariffs will make such information available more efficiently and to a broader audience.

9. The database will provide easier access to tariffs and allow the viewing of proposed tariff sections in context. One of the principal benefits of such a database is the ability to do historical research into tariffs. For example, proceedings such as complaints may involve past tariff provisions that have already been revised by the utility by the time the complaint is considered by the Commission. In order to expeditiously process such filings, the Commission, the parties, and the public need to be able to obtain the tariff provision that applies to the time period under review, rather than the currently effective tariff provision.[4]

10. The set of NAESB protocols and standards provides a foundation for building such a database. The standards define an extensible markup language (XML) schema[5] that will permit filers to assemble a filing package that includes the tariff changes, the accompanying tariff-related documents, such as the transmittal letter, rate schedules, and spreadsheets that are required to accompany various tariff filings, and other required information such as the proposed effective date of the filing. Upon the receipt of the filing electronically, the XML schema will enable the Commission to parse[6] (divide) the filed package into its component parts, place the filed documents into its eLibrary system, organize the tariff database and provide a metadata[7] that will permit the Commission and the public to search that database.

11. The NAESB standards and protocols also will provide flexibility to companies making tariff filings. In contrast to the Commission's prior approach, the standards will enable each regulated company to design or purchase software for creating tariff filings that will best accommodate its filing patterns and the needs of its business.

12. As a result of using the NAESB XML standards, we needed to make revisions in the regulations we previously proposed and in the method by which tariff related filings will be made at the Commission. In addition, several issues were raised regarding Commission policies for filing tariffs in the comments filed with NAESB. We address these issues below. Some of the most significant changes and proposals are the following:

- Tariffs[8] may be filed either using the current sheet based nomenclature or using section-based numbering at the choice of the filer.[9]
- Tariffs may be filed as entire documents in either of two electronic formats, RTF[10] or PDF,[11] except with

[3] In fact, companies themselves would often arrange to view those tariffs to try and recreate either effective tariffs or the tariff in effect during the time period of a particular proceeding.

[4] *See FPL Energy Marcus Hook, L.P.* v. *PJM Interconnection, LLC*, 118 FERC ¶ 61,169, at P 11, n.9 (2007) (parties litigated a complaint case based on a superseded tariff provision).

[5] XML schemas facilitate the sharing of data across different information systems, particularly via the Internet, by structuring the data using tags to identify particular data elements. For example, each filed tariff change will include tags for the relevant information, such as the utility name, the tariff section being changed, the name for that section, the effective date, and certain sections of tariff text. The tagged information could then be extracted and separately searched.

[6] Parse means to capture the hierarchy of the text in the XML file and transform it into a form suitable for further processing.

[7] The term metadata is based on the Greek word ''meta'' meaning after or beyond and in epistemology means ''about.'' Thus, metadata is data or information beyond or about other data. Digital Libraries, by William Arms (M.I.T. Press 2000), *http://www.cs.cornell.edu/wya/DigLib/MS1999/Chapter1.html* (visited April 11, 2008); The University of Queensland, *http://www.library.uq.edu.au/iad/ctmeta4.html* (visited April 11, 2008); The Linux Information Project, *http://www.linfo.org/metadata.html* (visited April 11, 2008). For example, in the XML schema, one required element is a proposed effective date and another element is the text of the tariff provision. The proposed effective date would be considered metadata relative to the tariff text.

[8] The term tariff is used herein to refer to tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission.

[9] Section-based filings will not have to include the sheet based nomenclature as a header or footer on the tariff page.

[10] RTF refers to Rich Text Format which is a standardized textual format that can be produced by a number of word processors.

[11] PDF refers to Portable Document Format which is a format used for representing documents that closely resembles the original formatting of the document.

respect to open access transmission tariffs for electric utilities and interstate natural gas companies which would have to be filed as individual sheets or as sections in RTF format as defined in the proposed regulations.

- Tariff filings can be served electronically using the same approach used for electronic service of other Commission filings.
- Filings of joint tariffs (tariffs covering two regulated entities) may be made with a single tariff filing by the entity designated to make the filing.
- Tariff filings for tariffs shared among companies (such as RTO tariffs) can be made individually by any of the companies with rights to file tariff changes.
- During initial baseline implementation of electronic tariff filing, only open access transmission tariffs and agreements need to be filed.
- After implementation of electronic tariff filing, all new tariffs and agreements must be filed using the standards. Existing agreements need to be filed only when they are revised.

A. Companies Required To File Tariffs Electronically

13. The companies or entities covered by this NOPR are those that submit tariffs, rates, or contracts with the Commission pursuant to the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Federal Power Act (FPA), the Interstate Commerce Act (ICA), the Flood Control Act, the Bonneville Power Act, the Northwest Power Planning Act, any other relevant statutes. Included among the companies or entities proposed to be covered by requirement are: Regional transmission organizations (RTOs) and independent system operators (ISOs); power authorities and federal power marketing administrations which file rates, contracts, or tariffs at the Commission; intrastate natural gas pipelines that file rates and operating conditions pursuant to the NGPA; interstate natural gas pipelines subject to the NGA which serve only an industrial customer; and companies or entities that may make voluntary tariff filings, such as reciprocity filings pursuant to Order No. 888.

B. Filing Process

1. Procedures for Making Tariff Filings

14. Using the new XML schema, companies will make tariff related filings using the existing eFiling portal. As described below, the filing process will be modified slightly from the current eFiling process, in particular to include a company registration that will provide increased security for the filing, as well as additional e-mail notifications of potential problems with the filing.

15. The person making a tariff filing must have previously registered in eFiling (Filer). Upon successfully logging into the FERC eFiling portal, the Filer will be presented with the introductory screen indicating success in accessing the site, and presented with a link to the filing creation part of the site, which will include an option to make a Tariff filing (eTariff portal).

16. The eTariff filing portal will prompt the Filer to enter the company identification number assigned during the company registration process and an associated password. After successfully passing this step, the Filer will upload an eTariff XML filing package that conforms to the XML schema. Once the filing is uploaded, the eFiling Web page will indicate the filing has been submitted.

17. After the filing has been submitted, a Confirmation of Receipt will be e-mailed to both the e-mail address of the Filer and to the e-mail address on file with FERC for the company identification number. This e-mail only acknowledges the receipt of the filing through the eFiling portal, provides a timestamp, and indicates that the filing is placed in the queue to be processed.

18. The XML filing package will be validated programmatically by an eTariff verification process. Depending upon the success of the verification process, a number of e-mails will be sent.

- If the verification is completed successfully, an e-mail will be sent to the validation e-mail address provided in the XML package and to the e-mail address associated with the company whose tariff is being revised.[12] This e-mail means only that the filing has passed the validation, not that it has been officially accepted by the Secretary of the Commission.
- If the XML filing package can be parsed (and the validation e-mail address can be obtained), but the package does not otherwise pass verification, an e-mail will be sent to the validation e-mail address provided in the XML filing package. This e-mail will provide information about the problems encountered during the verification process.
- If the XML cannot be parsed at all (is unreadable), an e-mail will be sent to the Filer and to the e-mail address associated with the company identification number indicating a problem has been encountered with the filing.

19. Once passed validation, the standard eFiling email will be sent to indicate whether the Secretary of the Commission has accepted and docketed the filing or rejected it. As occurs with all filings, the docketing email does not guarantee that other filing deficiencies will not result in rejection or other action pertaining to the filing later in the review processes within the Commission. After this step, the filing is passed on to eLibrary, the tariff database and other Commission systems.

2. XML Schema

20. Under the standards, the tariff filing must be made in conformance with the XML schema. The schema essentially is a method by which the filing entities can communicate information to the Commission. The schema proscribes the metadata elements and the textual information that must be included in the filing package. The data elements included in XML package are required to properly organize the tariff database and to maintain the proper relationship of tariff provisions in relation to other provisions. For example, these elements will identify which tariff provision is being revised so that the revised tariff can be placed electronically in the proper location within the tariff hierarchy. The filing package itself will include the text of tariff changes as well as all filing attachments, such as transmittal letters.[13] The XML schema will be maintained on the Commission website along with the required codes, descriptions, and other requirements, as well as information that may be useful to those developing filing software.[14] Contemporaneously with the issuance of this NOPR, we are posting on the website the XML schema along with the descriptions of the fields used in the schema, a proposed instruction manual, and preliminary codes to be used with the XML schema.

21. Although we do not envision that the schema and related code values will need to be changed frequently, the Secretary of the Commission, under Order No. 703, will have delegated authority to make modifications to them if necessary.[15] Before any such changes are made, a notice of the proposed change will be issued sufficiently in

[12] This may not be the same company making the filing; for example, in the case of a shared tariff, one notification will go to the company making the filing and the other will go to the ISO or RTO whose tariff is being revised.

[13] The XML must be filed as a zip (compressed) file.

[14] *http://www.ferc.gov* under the tab Documents and Filings, eTariff.

[15] 18 CFR 375.302(z).

advance to permit companies to revise their software.

C. Tariff Filing Requirements

22. The Commission's current regulations require companies to file tariff sheets that include specifically defined nomenclature to identify each sheet of the tariff.[16] A company is required to file only the tariff sheets containing the tariff revisions or changes.

23. As a result of the implementation of electronic tariff filing, the exchange of information between Commission staff and the various industries during the NAESB process, and the comments submitted to NAESB, we are proposing to allow far more flexibility in the structure and identification of tariffs. Companies may determine to structure their tariffs either using the existing tariff sheet format or as sections. Companies will also be given more flexibility to file tariffs either by dividing the tariff into sheet or sections and filing only the changed sheet or section, or for a wide range of tariff documents, by filing the entire tariff document for each change. In order to ensure that the Commission and the public have the ability to identify specific tariff provisions (either sections or pages), the version for each tariff filing will still need to be identified, but the versioning information has been simplified and will be included as metadata in the XML package, except for certain documents filed as PDFs.

1. Sheets or Section Filing Requirements

24. In order to compile the tariff database, the standards require companies to file tariff text as a specific data element. Companies will be permitted to choose whether to continue to number tariff provisions as individual tariff sheets (*e.g.*, Original Sheet No. 1) or sections (*e.g.*, 1.1.1).

25. We also do not believe there is a one size fits all approach to the way in which companies divide their tariffs in making tariff filings. Some individual rate schedules and agreements may be filed only once or revised only infrequently, while other rate schedules and tariffs may be extraordinarily large and revised frequently. Except as discussed in the following section with respect to open access tariffs, we therefore propose to allow companies to determine based on the nature of the tariff and frequency of filing whether to file tariffs by breaking the tariff into sheets or sections or by filing the tariff as an entire document. Companies that initially file using the entire document option will be allowed later to divide the tariff document into sections or sheets. However, we propose that, except with advance permission from the Office of Energy Market Regulation (or any successor name), a company that has already broken its tariff into sections or sheets, will not be able to recompile those sheets or sections and use the entire document option.

26. In order to facilitate database management, the NAESB standards provide that tariff text must be filed either using the RTF file format or the PDF file format.[17] Tariffs filed under the entire document option may be filed either in RTF or PDF. Tariffs filed as sections or sheets must be filed in RTF, due to limitations on the ability to process and assemble PDF files.[18]

2. Gas and Electric Open Access Transmission Tariffs

27. We are not proposing to permit the open access transmission tariffs for interstate natural gas pipelines and electric utilities to be filed using the entire document option for several reasons. Unlike individual service agreements or contracts that affect only the signatories to the agreements, the open access transmission tariffs affect a wide variety of customers and are the most frequently revised. Moreover, because of the breadth of these tariffs, and the need to review and research portions of these tariffs, it would not be efficient for staff or for the public to have these documents refiled in their entirety every time a company proposes to revise an individual tariff section or page.

28. We are therefore proposing revisions to §§ 35.9 and 154.102 to require that open access transmission tariffs, which will include other open access documents and documents of general applicability, such as ISO/RTO operating agreements and market rules, must be filed as sheets or sections. Because the electric OATTs are based on the Commission's pro forma OATT, we have specified the minimum required divisions for such filings. For non-ISO/RTO OATTs, the OATT must be divided at least at the section 1.0 level, with individual sections for each schedule or attachment. Because ISO/RTO OATTs are much more complex, we propose to require at a minimum that they be divided at the 1.1 level. In their comments to NAESB, the RTOs ask whether they can divide tariffs into smaller divisions, because of their complexity. We clarify that the proposed standards in the regulations are the minimum divisions only. We propose to permit, and encourage, filers to use even smaller divisions that are appropriate to their individual tariffs and filing patterns.

29. In addition, to aid electric utilities in filing their OATTs, we propose to post on our website a pro forma OATT divided into the largest allowable sections, as well as information that will help companies develop Microsoft Word macros to electronically divide tariffs at this level.

30. Because we have not specified a pro forma interstate natural gas tariff, the proposed regulation will require that the interstate natural gas pipeline tariffs filed as sections be divided so that each section includes only related subject matter and is of reasonable length. Negotiated rate agreements and other non-conforming service agreements need not be divided, but can be filed as entire documents.

3. Versioning

31. The Commission currently requires each tariff page to include a version number that can be used to identify the particular revision of that page (*e.g.*, First Revised Sheet No. 1 would replace Original Sheet No. 1). Because tariff provisions change, often frequently, over time this convention is useful for identifying and referring to particular tariff provisions in orders. A number of the comments filed with NAESB maintain that the existing versioning requirement is unnecessarily complex for certain types of filings and urge us to eliminate the requirement to include versioning associated with every page or section of the tariff. The comments maintain that the XML schema includes a revised versioning requirement that would be satisfactory for identifying particular tariff provisions.

32. We recognize that in many proceedings, the official tariff designation is not used by the parties and may not be of critical importance. However, in proceedings in which past tariff language is of importance, the ability to have a unique reference to the

[16] *See* 18 CFR 35.9; 154.102(e).

[17] The requirements adopted by the Commission in Order No. 703 will apply to PDF formatted documents filed as tariff text. Tariffs filed in PDF format must use the print-to-pdf feature as opposed to an unsearchable scanned format, except that tariff documents existing only on paper may be scanned into PDF. *Filing Via the Internet,* Order No. 703, 72 FR 65659 (Nov. 23, 2007), FERC Stats. & Regs., Regulations Preambles ¶ 31,259, P 23 (2007). We, however, encourage filers that scan old paper tariff documents to use an optical character recognition program to convert the scanned file to text prior to filing, so that copy and paste and search functions may be used.

[18] RTF is a text format that will enable the Commission's software to assemble quickly the sheets or sections into a complete tariff document. In contrast, PDF is not a textual format, and does not permit such processing.

precise tariff provision is still needed. As we move to electronic tariff filing, we believe that with the adoption of the standards our versioning requirement can be modified and made less complicated.

33. The XML schema requires that each sheet, section, or entire tariff be identified with a version number in an x.y.z format. The x.y.z format will accommodate the same level of identification as our existing nomenclature, including items such as squeezed and retroactive sheets. Some companies may want to continue this detailed approach to better identify the placement and relative position of tariff sheets and sections, and the x.y.z format will accommodate such identification. Other companies do not believe that their tariffs require such a detailed hierarchy of changes. As long as each tariff section, sheet, or entire document is identified uniquely, we propose to allow companies to choose how complex to make their identification. Companies, for example, may choose simply to numerically number each section, sheet, or entire tariff document as they file it, using just the x field.

34. The comments also raise questions about whether any such identification must continue to appear in the text of the filed documents. Except in the case of tariffs filed in PDF, we do not propose to require that identification be placed on the individual tariff revisions that are filed; companies however may choose to include such identification if they desire. Because the requisite versioning information is in the XML schema and will be made available to staff and the public in the tariff database, companies do not need to include that information in their filing. However, in order to ensure that the versioning information is available to the public on eLibrary, the Commission will use the metadata provided in the XML schema to generate a document on eLibrary that contains the appropriate versioning information. Because we are creating this document by electronically combining information from the database, the formatting of the versions and tariff text may not appear identical to the filing made by the company.

35. The only exception to this rule is for tariff documents filed using PDF. Because PDF is not a textual format and does not permit easy electronic manipulation, we cannot generate a document for eLibrary that contains the correct versioning information. For these documents, therefore, the first page of the tariff document must include the required information: Company name, tariff title (if applicable), and the appropriate version number.

4. Clean and Marked Tariff Changes as Attachments

36. As discussed above, the tariff text for use by the database will be filed as a separate data element. But, as discussed above, the Commission may not be able to generate a formatted version of that tariff text acceptable to the filer for inclusion in eLibrary. For this reason, the standards provide that companies will also include as an attachment to their filing a clean copy of the relevant tariff sheets, sections, or entire document formatted as the filer prefers.[19] The clean version of the tariff text may be filed using any software currently approved by the Secretary of the Commission for eFiling.

37. The Commission's current interstate natural gas pipeline (§ 154.201) and electric utility regulations (§ 35.10), require companies to provide a marked version of the tariff text in the tariff filing indicating the changes and deletions made to the existing tariff text. The oil pipeline regulations (§ 341.3) provide for the use of special symbols to denote changes.

38. We propose to continue the requirement for filing marked versions of tariffs. We also are proposing to modify the symbols used by the oil pipelines so that the symbols can be entered into a find or search message box using keystrokes available on a keyboard. Tariff documents can now be filed as large sections or as entire documents. Although we are confident that filing companies will not intentionally make extraneous, unmarked changes to tariff text, we want to ensure that both staff and the public are not put in the position of having to read the entire tariff text of large sections or an entire document to ensure that unmarked changes were not made. As a precaution, therefore, we are proposing to revise our regulations to make clear that only the sections of the tariff document appropriately marked will be considered part of the filing. Revisions that are not marked will not be considered a part of the requested tariff revision and any acceptance of a filing by the Commission will not constitute acceptance of an unmarked tariff change.

[19] The text of the tariff to be included in the database must, of course, match exactly the text of the clean copy of the tariff filed as an attachment. The standards also will require the company to include a non-formatted plain text copy of the tariff for search purposes.

5. Joint, Shared, and Section 206 Filings

39. An issue raised in the comments by the electric industry is how companies are to make joint and shared tariff filings and section 206 filings. Joint filings refer to tariffs applicable to more than one company. Shared tariffs refer to a tariff that can be amended by one or more parties. Shared tariffs principally refer to ISO or RTO tariffs, sections of which can be revised by the ISO and RTO as well as by individual transmission owners. Section 206 tariff filings again relate principally to ISOs and RTOs, which may not have the ability to make tariff filings under section 205 of the FPA, but have the right to make such filings under section 206 of the FPA. The comments are concerned that the filing process for such tariffs not be unduly complicated. We have developed approaches to the filing of these more complicated tariffs that we believe will ensure that all parties with rights can make appropriate filings without undue burden.

a. Joint Tariff Filings

40. Section 35.1(a) of the Commission's regulations establishes two methods by which public utilities that are parties to the same rate schedule may file the rate schedule with the Commission: (1) Each public utility can file the rate schedule itself, or (2) ''or the rate schedule may be filed by one such public utility and all other parties having an obligation to file may post and file a certificate of concurrence.'' [20] Prior to Order No. 614, when filers made a single filing, Commission staff would copy the rate schedule or tariff for the number of joint filers, place the appropriate designations on the tariffs, and put them in the tariff books. In Order No. 614, the Commission stated in the preamble that ''on joint services, each utility offering a service must file its own tariff sheets.'' [21] Currently, we therefore receive a single filing usually from a designated filer with identical tariff sheets for each joint filing utility, except that each utility's tariff contains the appropriate sheet designation for that utility. Given the prevalence of joint tariff filings, the electric utilities request that they not be required to make separate tariff filings for each utility covered by the tariff, including all supporting materials, in place of the single filing now permitted.

41. In the Commission's current state of software development, we are not in

[20] 18 CFR 35.1(a).

[21] *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096, at 31,503 (2000).

a position to permit a single designated filer to submit tariff sheets on behalf of multiple entities. We, however, recognize the inefficiency and confusion for the filer, the staff, and the public in having multiple identical filings made on behalf of different companies. We therefore have developed what we think is a reasonable approach for handling such filings that will minimize the burden on the filer but provide ready access to the tariff.

42. We propose to no longer require utilities to follow the Order No. 614 preamble instructions to file multiple copies of a tariff. Instead, the joint filers will be permitted to designate one filer to submit a single tariff filing for inclusion in its database that reflects the joint tariff, along with the requisite certificates of concurrence. The non-designated joint filers would include in their tariff database a tariff section consisting of a single page or section that would provide the appropriate name of the tariff and identify which utility is the designated filer for the joint tariff. In this way, the staff or the public will be able to find quickly the appropriate tariff in the database, without the need for multiple filings by each of the filers.

43. While this issue arose in the context of joint filings by public utilities, the solution proposed here should be equally applicable to other industries that have joint tariffs.

b. Shared Tariffs

44. Shared tariffs refer principally to ISO and RTO tariffs, portions of which may be revised by FPA section 205 filings by the ISO/RTO or other transmission owners. Depending on the tariff section involved, one party may have exclusive rights to modify the section or multiple parties may have rights to modify the section. The structure of all the ISO and RTO tariffs as well as their filings rights are different.

45. In order to file shared tariffs today, parties with joint filing rights have to share information about the tariff, such as the current section numbering and sheet designations as well as the text of the provisions. Some ISOs and RTOs provide in their tariffs that the ISO/RTO is responsible for administering the Transmission Tariff.[22]

46. Electronic filing should provide parties with shared tariffs with greater opportunities to develop electronic filing methods that fit their respective tariff structure and filing rights: (1) Parties in organized markets can develop or commission filing software to be shared among those with filing rights that imposes restrictions on filing rights as applicable under the individual ISO or RTO tariff; (2) ISOs and RTOs can agree to make all filings on behalf of the members in order to maintain administrative control over the tariff; or (3) each of the respective parties with filing rights can continue to make individual filings as they do today by sharing certain relevant tariff and relevant metadata among the parties with shared rights.

47. Since the comments focus on the third option, individual filings by each company, we will describe how such filings can be made securely. The party initiating the filing (Company A) would need to have an eRegistered party (Filer) log-on to make the filing. The Filer would have to know Company A's company identification number and password. In order to make such a filing, the ISO and RTO would have to share with Company A its company identification number[23] and tariff identifier used in the XML schema for the ISO or RTO's tariff along with other required metadata for making the filing.

48. Currently, for some ISOs and RTOs, when a transmission owner makes a section 205 filing to revise an ISO or RTO tariff, the ISO or RTO is notified only through service. In order to provide greater security and more immediate notification to the ISO or RTO, we will provide an email to the ISO or RTO when the XML filing passes verification checks. Although we have not experienced unauthorized filings to date through our paper or eFiling system, this notification will ensure that the ISO or RTO can detect immediately any potential unauthorized filing. Moreover, because the person making the filing will be eRegistered and will be using the company identification number of the filer (Company A), we will be able to easily identify who made the filing in case any questions are raised.

c. Section 206 Filings Related to ISOs/RTOs

49. ISOs and RTOs sometimes have tariff or operating agreement provisions that require a certain percentage of stakeholder support for making FPA section 205 filings. As a result, if the requisite stakeholder approval is not obtained, ISOs and RTOs have retained rights to make filings pursuant to section 206 of the FPA, and may make a single filing under both section 205 and section 206.[24] In addition, transmission owners that are part of the RTO also may file complaints under FPA section 206 contending that the ISO or RTO tariff is unjust and unreasonable. In the comments included in the NAESB submission, a question was asked about the appropriate method of making such filings, in particular whether the section 206 filing should be made using the Commission's eFiling complaint mechanism, with the ISO or RTO filing through the eTariff to amend its tariff only if the Commission's ruling requires tariff changes.

50. For ISO or RTO transmission owners filing a complaint against the ISO or RTO, we think the complaint should be filed pursuant to the standard complaint mechanism. While these transmission owners may have legal rights to make section 205 filings to change certain aspects of the ISO or RTO tariff, they do not have any different rights than any other party to file complaints under section 206. If the Commission agrees with the complainant, the ISO or RTO would then be directed to submit a compliance filing through the eTariff portal to make the required tariff changes.

51. However, we propose that the RTO or ISO making a filing to revise its own tariff pursuant to section 206 should make such a filing through the eTariff portal with the appropriate tariff revisions and XML metadata. Because such a filing relates to the ISO's or RTO's own tariff, and the ISO or RTO has a reserved right to make such a section 206 filing, such a filing is more similar to a standard tariff filing by a utility as opposed to a complaint filing. In addition, since RTOs or ISOs may make a single filing in one proceeding under both sections 205 and 206, it seems appropriate to have such a filing made using the standard eTariff mechanism.

D. Other Business Practice Changes

1. Electronic Service

52. Many parties requested that once an electronic tariff mechanism is in place that they be able to serve their initial tariff filings electronically. In the 2005 Notice, the Commission stated that it would permit electronic service for initial filings.[25] The proposed changes to our regulations will permit electronic service according to the same procedures and protocols used for other

[22] *See* Midwest ISO Transmission Tariff, Appendix K, § F. *http://mktweb.midwestiso.org/publish/Document/469a41_10a26fa6c1e_-6d790a48324a/TOA%20(As%20Accepted%20on%2012–03–07%20EC07–89).pdf?action=download&_property=Attachment.*

[23] The ISO or RTO, however, would not have to share its password.

[24] *See, e.g., PJM Interconnection, LLC,* 115 FERC ¶ 61,079 (2006).

[25] 112 FERC ¶ 61,043 at P 7.

forms of service under the Commission's regulations.[26] Customers and state agencies wishing to receive service will be required to provide the company with an applicable email address (since a service list will not exist at the time of an initial filing). Any customer believing it is unable to receive electronic service will need to request a waiver of electronic service as provided in the regulations.[27]

2. Attachment Documents

53. Under the standards, all attachments to a filing, such as the transmittal letter, testimony, cost-of-service statements, will be included as part of the XML package. The attachments must meet the formatting requirements for any other eFiled document, as set forth by the Secretary of the Commission.

3. Withdrawal of Pending Tariff Filings and Amendments to Tariff Filings

54. As discussed in the 2004 NOPR, the electric, gas, and oil industries have different procedures for withdrawing and amending a tariff filing. For example, the regulations governing oil pipelines permit withdrawal of proposed tariff filings before the tariff filing is effective,[28] while the regulations for electric and gas companies do not address withdrawal of tariff filings prior to suspension.[29] Because tariff withdrawal and amendment filings affect the status of tariff proposals, standardization of these procedures is needed in order to effectuate an electronic tariff system. We are therefore continuing our proposal from the 2004 NOPR to allow a company to withdraw in its entirety a tariff filing, which has not become effective, and upon which no Commission or delegated order has been issued, by filing a withdrawal motion with the Commission. The withdrawal will become effective, and the filing deemed withdrawn, at the end of 15 days, so long as no answer in opposition to the withdrawal motion is filed within that period and the Commission has not acted to deny the withdrawal motion. If such an answer in opposition is made, the withdrawal is not effective until a Commission or delegated order accepting the withdrawal is issued. In order to ensure that the tariff database remains accurate, such withdrawal filings will need to be made through the eTariff portal using the XML schema so that the appropriate data elements can be revised.

55. Electric utilities and interstate pipelines file amendments or modifications to tariff provisions to make substantive changes to their filings as well as to correct minor errors. Because such modifications can have substantive effect, the Commission is proposing to revise § 35.17 and § 154.205 to make clear that the filing of an amendment or modification to a tariff provision will toll the period for action on the prior filing and establish a new period for action.[30]

4. Motions

56. Several types of motions may be made by regulated entities that do not include tariff sheets, but that affect the status of a tariff filing. For example, interstate natural gas pipelines may file motions to move suspended tariff sheets into effect, and other regulated companies may file motions to change the effective dates of tariff filings or to withdraw tariff filings. Because such filings affect the metadata associated with the tariff filing, such motions must be filed through the eTariff portal using the XML schema.

5. Rate Sheets for Tariff Filings by Intrastate and Hinshaw Pipelines

57. Under the Commission's current regulations in section 284, subparts C and G, an intrastate or Hinshaw pipeline must provide the Commission with an election of how it will determine its interstate service rates. An intrastate or Hinshaw pipeline also is required to file with the Commission, within 30 days of the commencement of service, a statement of operating conditions, which includes the rate election it has made, but which currently does not require a statement of the interstate rates to be charged. The interstate rates are included only as part of the overall filing.

58. In implementing the proposal for electronic filing tariff filing, the statement of operating conditions will be placed in the tariff database. To facilitate easier access by the Commission and the public to the interstate service rates of intrastate and Hinshaw pipelines, we are proposing to revise § 284.123 of the regulations to require intrastate and Hinshaw pipelines to include a statement of their interstate service rates as part of the statement of operating conditions that will appear in the tariff database. Including a statement of interstate service rates in the statement of operating conditions will ensure that all relevant information related to interstate service will be accessible in the tariff database.

E. Transition Procedures

1. Baseline Tariff Filings

59. Each utility will be required to make a filing to establish its baseline tariffs. In the 2005 Notice, we proposed to reduce the burden in making the baseline filing and limit such filings to tariffs of generally applicability. As applied to filings by electric utilities, the baseline filing would include open access transmission tariffs (OATTs), power sales tariffs available to any customer, and market-based rate tariffs. Individually negotiated rate schedules and agreements would not have to be included as part of the baseline filing. Interstate natural gas pipelines would have to file their existing Volume No. 1 tariffs, but would not have to file special rate schedules included in Volume No. 2 tariffs, or any existing negotiated rate or non-conforming service agreements. Intrastate pipelines would have to file their statement of operating conditions including their interstate service rates. Oil pipelines would need to file their tariff publications. Other pre-existing tariffs, rate schedules, and agreements do not need to be included in the baseline filing, although companies are free to include these agreements in their baseline filings, and we would encourage them to do so.

60. After implementation, all new tariffs and rates schedules would have to be filed using the XML schema. Existing tariffs and rate schedules not included as part of the baseline filing would need to be filed electronically only when they are revised or amended.

61. We recognize that some of the pre-existing tariffs and rates schedules may not exist in electronic form. Companies having or electing to file such agreements do not need to retype the entire agreement. They may scan these agreements into PDF format and file them in that fashion as an entire document. Although not required, companies should run an optical character recognition program (OCR) to convert these scanned documents into text so that the text of the tariff can be searched and copied. We recognize that OCR may not work well on some older documents, but even if the OCR version is not filed as the tariff text, it should be included in the plain text field of the XML schema for search purposes.

[26] 18 CFR 385.2010.

[27] 18 CFR 390.3.

[28] 18 CFR 341.13.

[29] 18 CFR 35.17; 154.205.

[30] As we stated in the 2004 NOPR, we recognize that in the past, we have sought to process minor changes filed in NGA cases within the 30-day statutory period, and we will continue to try to do so for those amendments that are not significant or do not create a major substantive difference in the tariff proposal.

62. The baseline tariff filing is not a substantive tariff revision, and will be used only for placing generally available tariffs into the database. The baseline filing, therefore, should reflect the existing effective tariff, with no proposed substantive changes or revisions. The baseline tariff filings will be subject to notice and comment solely to permit customers to ensure that the proposed baseline tariff is an accurate reflection of the effective tariff. No protests involving other issues, such as the merits of various sections of the tariff, will be considered. We also propose a one-time delegation of authority to the Director of OEMR to rule on protests.

63. If a regulated entity has a pending or suspended tariff change filing at the time of the filing of the baseline tariff, the regulated entity should not file these pending or suspended tariff sections as part of the baseline tariff filing. When the Commission acts on pending or suspended tariffs provisions, the companies will file the tariff provisions through the eTariff portal for inclusion in the database.

2. Testing, Implementation and Further Procedures

64. We recognize that after the final rule, companies and third-party vendors developing tariff filing software will need time for development as well as a mechanism for testing their software to make sure that their filings will be accepted by the Commission. We will therefore provide a testing site where companies can make test electronic filings to determine whether their XML packages can be received and can be parsed in order to determine if the XML package can be opened and broken into its constituent parts, and to verify whether the metadata supplied meets the requirements of the XML schema.

65. Further, as the development process continues, we think it will be useful to continue the dialog among FERC staff and the industries involved, perhaps through the good offices of NAESB, to help the industries better understand the use of the code values as well as to discuss issues that may arise regarding methods of implementing the standards. Commission staff also will be available to answer individual questions about the use of the XML schema.

66. While we would like to move as quickly as possible to electronic tariff filing and the tariff database (and we think the industries also would like to take advantage of the ease of electronic filing and electronic service), we recognize that we need to provide sufficient time for software development and testing to ensure that the filing of tariffs electronically has as few bugs as possible. As a general matter, we envision that compliance with the electronic filing should be able to begin within six months to one year after the final rule is issued, but we will not propose a firm deadline or structure for compliance at this point.

III. Information Collection Statement

67. The Office of Management and Budget (OMB) regulations require approval of certain information collection and data retention requirements imposed by agency rules.[31] Upon approval of a collection of information and data retention, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

68. The information provided under Part 35 is identified for information collection and records retention purposes as FERC–516. Data collection FERC–516 applies to all reporting requirements covered in 18 CFR Part 35 including electric rate schedule filings, market power analysis, tariff submissions, triennial reviews, and reporting requirements for changes in status for public utilities with market-based rate authority. The information provided under Parts 154 and 284 is identified for information collection and records retention purposes as FERC–545. Data collection FERC–545 applies to all reporting requirements covered in 18 CFR Part 154 including natural gas rate schedule filings, and tariff submissions. The information provided under Part 153 is identified for information collection and records retention purposes as FERC–539. The information provided for under Part 341 is identified for information collection and records retention purposes as FERC–550. Data collection FERC–550 applies to all reporting requirements covered in 18 CFR Part 341 including oil pipeline tariffs, indexes of tariffs, rates, and tariff publications. The Commission is submitting these information collection requirements to OMB under section 3507(d) of the Paperwork Reduction Act.[32] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimates: As discussed herein, the Commission proposes amending its regulations to require that all tariffs, tariff revisions and rate change applications for natural gas, oil pipeline and public utilities be filed electronically based on standards developed by the electric, gas, and oil industries through the NAESB process. During the NAESB process, the industries opted for the flexibility provided by the standards in place of using the filing software developed by the Commission. The standards provide companies with the ability to obtain software, or modify existing tariff maintenance software, that better integrates with their individual tariff maintenance and business needs. The use of the NAESB standards, in place of Commission distributed software, also provides an open framework for third-party software developers to develop filing applications or processes, which, by handling multiple parties' filings, may prove less expensive than the cost to each company of building its own system. Because cost estimates for such third party programs are not available, the following burden estimates reflect the cost to an individual company of obtaining software, including open access software, and programming time, that is sufficient to meet the requirements of the regulation, as well as the cost of making the required baseline filing. These costs are one-time compliance costs. Individual companies' costs may differ depending on their internal business needs and the features they need. In addition, the use of electronic filing will save the costs of making and serving paper filings on an ongoing basis due to savings in mail and messenger delivery and copying, and we provide estimates of those savings below for one year. The public reporting and records retention burdens for the proposed reporting requirements and the records retention requirement are as follows.[33]

[31] 5 CFR 1320.11.

[32] 44 U.S.C. 3507(d) (2000).

[33] These burden estimates apply only to this NOPR and do not reflect upon all of FERC–516, FERC–545, FERC–539 or FERC–550.

BASELINE TARIFF—HOURS

Data collection	Number of respondents	Hours per tariff	Total hours	Installation hours	Total install hours	Total hours
FERC–516:						
Utilities	152	9	1368	16	2432	3800
Marketers	984	5	4920	16	7872	12792
RTOs/ISOs	6	362	2172	24	144	2316
FERC–545:						
Small	96	7	672	16	1536	2208
Pipelines:						
Large	60	18	1080	16	960	2040
Pipelines:						
NGPA	200	6	1200	16	3200	4400
FERC–550 Oil	200	9	1800	16	3200	5000
Totals			13212		19344	32556

Total Annual Hours for Collections: 32,556.

BASELINE TARIFF—COSTS

Data collection	Number of respondents	Cost per tariff	Total filing cost	Software purchase & installation	Total cost
FERC–516:					
Utilities	152	$211	$32,027	$1,690	$256,880
Marketers[34]	984	109	107,448	845	831,480
RTOs/ISOs	6	8,345	50,072	2,450	14,700
FERC–545:					
Small Pipelines	96	171	16,429	1,690	162,240
Large Pipelines	60	423	25,391	1,690	101,400
NGPA	200	132	26,484	1,690	338,000
FERC–550 Oil	200	206	41,152	1,690	338,000
Totals			299,003		2,042,700
Combined Total					2,341,703

GOING FORWARD COST SAVINGS PER ANNUM

	Total number of filings	Cost per filing	Total cost
Oil	689	$110	$75,790
Electric	4,445	406	1,804,670
Gas	2,548	406	1,034,488
Total			2,914,948

OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting notification of this proposed rule to OMB. If the proposed requirements are adopted they will be mandatory requirements.

Title: FERC–516, Electric Rate Schedules and Tariff Filings; FERC–545, Gas Pipeline Rates: Rate Change (Non Formal); FERC–549 Gas Pipeline Rates: NGPA Title III Transactions; and FERC–550 Oil Pipeline Rates: Tariff Filings.

Action: Proposed Collections.

OMB Control Nos. 1902–0096, 1902–0154, 1902–0062 and 1902–0089.

Respondents: Business or other for profit.

Frequency of responses: On occasion.

Necessity of the Information:

69. The Federal Energy Regulatory Commission is proposing amendments to its regulations to require that all tariffs and tariff revisions and rate change applications for the public utility natural gas pipeline and oil pipeline industries be filed electronically with the Commission in lieu of paper. Electronically filed tariffs and rate case filings should improve the efficiency of the administrative process for tariff and rate case filings, by providing time and resource savings for all stakeholders. Respondents should see savings by reducing the number of personnel required to assemble and submit paper filings, and a reduction in duplication and mailing expenses. Users of the information will be able to access the data at lower costs due to efficiencies provided by electronic filing and retrieval. Data filed electronically can be processed faster than paper filings. This is due in part because procedural steps related to verifying the applicant, receiving the tariff filing, routing the tariff filing, entering the tariff filing into FERC's official record, public tariff maintenance, public access to the tariff and tariff filing, and

[34] The costs for marketers assumes that affiliated marketers will share a single installation.

confirming receipt of the tariff filing largely can be automated. Also the speed at which tariff filings can be processed electronically can increase the integrity of the data by speeding the process by which the applicants and public can view the filings and identify errors, and facilitating rapid filing of corrections. This capability is beneficial as many tariff filings involve statutory processing deadlines.

70. The Proposed rule will assist the Commission's efforts to comply with the Government Paperwork Elimination Act (GPEA) by developing the capability to file electronically with the Commission via the Internet with uniform formats using software that is readily available and easy to use and also achieve the President's Management Agenda initiatives of expanding electronic government.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with the collections of information and assured itself, by means of internal review, that there is specific, objective support for the information collection burden estimates. Moreover, the Commission has reviewed the collections of information proposed by this NOPR and has determined that these collections of information are necessary and conform to the Commission's plans, as described in this rule, for the collection, efficient management, and use of the required information.[35] Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*]

71. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–4650, fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov*. Please reference the docket number of this rulemaking in your submission.

[35] See 44 U.S.C. 3506(c). (2000).

IV. Environmental Analysis

72. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[36] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

V. Regulatory Flexibility Act Certification

73. The Regulatory Flexibility Act of 1980 (RFA)[37] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed rule will be applicable to all entities regulated by the Commission, a small number of which may be small businesses. The Commission finds that the regulations proposed here should not have a significant impact on these few small businesses as they should be able to acquire relevant software. Software to create XML files is available from several Internet Web sites as shareware or subject to low-cost licensing options. Moreover, by eliminating the requirement to file numerous paper copies of tariffs and documents associated with rate filings, these regulations are designed to reduce the filing burden on all companies, including small businesses. Accordingly, the Commission finds that these regulations will not impose a significant economic impact on small businesses and no regulatory flexibility analysis is required pursuant to § 603 of the RFA.

VI. Comment Procedures

74. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 29, 2008.

[36] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[37] 5 U.S.C. 601–612.

Comments must refer to Docket No. RM01–5–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

75. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

76. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC, 20426.

77. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

78. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

79. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

80. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements, Electricity, Incorporation by reference.

18 CFR Part 131

Electric power.

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements, Natural gas companies, Rate schedules and tariffs.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 281

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements, Incorporation by reference.

18 CFR Part 300

Administrative practice and procedure, Electric power rates, Reporting and recordkeeping requirements, Electricity.

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 344

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 347

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 348

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act, Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 35.1 [Amended]

2. Section 35.1 is amended as follows:

a. In paragraphs (b) and (c) remove all references to ''supplement''.

b. In paragraph (c), the words ''Notices of Cancellation or Termination'' are removed and the words ''cancellation or termination'' are added in their place.

3. Section 35.2 is amended as follows:

a. In paragraph (b), remove and reserve footnote 1.

b. Paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f) respectively.

c. In redesignated paragraphs (d) and (f), the words ''rate schedule'' are removed and the words ''rate schedule or tariff'' are added in their place.

d. Paragraph (c) is added, and redesignated paragraph (e) is revised to read as follows:

§ 35.2 Definitions.

* * * * *

(c) *Tariff.* The term ''tariff'' means a compilation of rate schedules, service agreements, and other schedules of a public utility.

* * * * *

(e) *Posting.* (1) The term ''posting'' as used in this part shall mean:

(i) Keeping a copy of every rate schedule, service agreement, or tariff of a public utility as currently on file, or as tendered for filing, with the Commission open and available during regular business hours for public inspection in a convenient form and placed at the public utility's principal and district or division offices in the territory served, and

(ii) Serving each purchaser under a rate schedule, service agreement, or tariff either electronically or by mail in accordance with the service regulations in part 385 of this chapter with a copy of the rate schedule, service agreement, or tariff. Posting shall include, in the event of the filing of increased rates or charges, serving either electronically or by mail in accordance with the service regulations in part 385 of this chapter each purchaser under a rate schedule or schedules proposed to be changed and to each State Commission within whose jurisdiction such purchaser or purchasers distribute and sell electric energy at retail, a copy of the rate schedule showing such increased rates or charges, comparative billing data as required under this part, and, if requested by a purchaser or State Commission, a copy of the supporting data required to be submitted to this Commission under this part. Upon direction of the Secretary, the public utility shall serve copies of rate schedules, service agreements, or tariffs, and supplementary data, upon designated parties other than those specified herein.

(2) Unless it seeks a waiver of electronic service, each customer, State Commission, or other party entitled to service under this paragraph (e) must notify the company of the e-mail address to which service should be directed. A customer, State Commission, or other party may seek a waiver of electronic service by filing a waiver request under part 390 of this chapter providing good cause for its inability to accept electronic service.

* * * * *

4. Section 35.3(a) is revised to read as follows:

§ 35.3 Notice requirements.

(a) *Rate schedules or tariffs.* All rate schedules or tariffs or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective under an initial rate schedule or the date on which the filing party proposes to make any change in electric service and/or rate, charge, classification, practice, rule, regulation, or contract effective as a change in rate schedule, except as provided in paragraph (b) of this section, or unless a different period of time is permitted by the Commission. Nothing herein shall be construed as in any way precluding a public utility from entering into agreements which, under this section, may not be filed at the time of execution thereof by reason of the aforementioned sixty to one hundred-twenty day prior filing requirements. The proposed effective date of any rate

schedule or tariff filing having a filing date in accordance with § 35.2(d) may be deferred by making a filing requesting deferral prior to its acceptance by the Commission.

* * * * *

5. Section 35.7 is revised to read as follows:

§ 35.7 Electronic filing requirements.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, service agreements, and contracts, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs. Paper submittals are not required.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that: the contents are true and correct to the best knowledge and belief of the signer; and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in part 385 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

6. In § 35.8, the section heading is revised to read as set forth below, paragraph (b) is removed, and the designation ''(a)'' is removed from paragraph (a).

§ 35.8 Protests and interventions by interested parties.

* * * * *

7. Section 35.9 is revised to read as follows:

§ 35.9 Requirements for filing rate schedules and tariffs.

(a) All rate schedules, tariffs, and service agreements may be filed either by dividing the rate schedule, tariff, or agreements into individual tariff sheets, or tariff sections, or as an entire document except as provided in paragraphs (b) and (c) of this section.

(b) Open Access Transmission Tariffs (OATT) filed by utilities that are not Independent System Operators or Regional Transmission Organizations must be filed either as individual sheets or sections. If filed as sections, the sections must be no larger than the 1.0 level with single sections for each schedule or attachment. Individual agreements that are part of the OATT may be filed as entire documents.

(c) Open Access Transmission Tariffs and other open access documents filed by Independent System Operators or Regional Transmission Organizations must be filed either as individual sheets or sections. If filed as sections, the sections must be no larger than the 1.1 level including schedules or attachments. Individual agreements that are part of the OATT may be filed as entire documents.

8. In § 35.10, paragraphs (b) and (c) are revised to read as follows:

§ 35.10 Form and style of rate schedules and tariffs.

* * * * *

(b) At the time a public utility files with the Commission and posts under this part to supersede, supplement, or otherwise change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission under this part, in addition to the other requirements of this part, it must list in the transmittal letter the pages or sections revised and file a marked version of the rate schedule or tariff pages or sections showing additions and deletions. New language must be marked by either highlight, background shading, bold text, or underlined text. Deleted language must be marked by strike-through.

(c) In any filing to supersede, supplement, or otherwise change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission under this part, only those revisions appropriately designated and marked under paragraph (b) of this section constitute the filing. Revisions to unmarked portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

§ 35.10a [Amended]

9. In § 35.10a(b), the word ''§ 35.10(b)'' is removed and the word ''§ 35.7'' is added in its place.

§ 35.11 [Amended]

10. In § 35.11, the words ''purchasers under other rate schedules'' are removed and the words ''purchasers under other rate schedules or tariff provisions'' are added in their place.

11. Amend § 35.13 as follows:

a. In paragraph (a) introductory text, remove the reference to ''supplement,''.

b. In paragraph (c)(1) introductory text, remove the reference to ''or supplemented''.

c. Revise the section heading to read as follows:

§ 35.13 Filing of changes in rate schedules or tariffs.

* * * * *

12. In § 35.15, paragraph (a), the first sentence is revised to read as follows:

§ 35.15 Notices of cancellation or termination.

(a) *General rule.* When a rate schedule or tariff or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or tariff or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule or tariff at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect. * * *

* * * * *

§ 35.16 [Amended]

13. In § 35.16, the words ''on the form indicated in § 131.51 of this chapter'' are removed and the words ''with a tariff consistent with the electronic filing requirements in § 35.7 of this part'' are added in their place.

14. Section 35.17 is amended as follows:

a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (c), (d), and (e), respectively.

b. The section heading is revised, and new paragraphs (a) and (b) are added to read as follows:

§ 35.17 Withdrawals and amendments of rate schedules or tariff filings.

(a) *Withdrawals of rate schedule or tariff filings prior to Commission action.*

(1) A public utility may withdraw in its entirety a rate schedule or tariff filing that has not become effective and upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed rate schedule or

tariff sections will not become effective under section 205(d) of the Federal Power Act in the absence of Commission action making the rate schedule or tariff filing effective.

(2) The withdrawal motion will become effective, and the rate schedule or tariff filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to rates or tariff sections prior to Commission action on the filing.* A public utility may file to amend or modify a rate or tariff section contained in a rate schedule or tariff filing that has not become effective and upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 205(d) of the Federal Power Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 61 days from the date of the filing of the amendment or modification.

* * * * *

§ 35.21 [Amended]

15. In § 35.21, footnote 5, to the words ''footnote 1 to'' are removed.

§ 35.23 [Amended]

16. In § 35.23, paragraph (b)(1)(ii), the word ''pages'' is removed and the words ''pages or sections'' are added in their place.

§§ 35.1, 35.4, 35.5, 35.6, 35.11, 35.12, 35.13, and 35.17 [Amended]

17. In addition to the amendments set forth above, in 18 CFR part 35, the following nomenclature changes are made to the sections indicated:

a. In §§ 35.1(b) and (c), 35.4, 35.6, 35.11, 35.12(a), 35.13(a), 35.13(a)(1), 35.13(a)(2)(iii), 35.13(b)(1), 35.13(c)(1), 35.17(c), 35.17(d), and 35.17(e), all references to ''rate schedule'' are removed and ''rate schedule or tariff'' is added in their place.

b. In the headings of §§ 35.17(c), 35.17(d), and 35.17(e), all references to ''rate schedules'' are removed and ''rate schedules or tariffs'' is added in their place.

PART 131—FORMS

18. The authority citation for part 131 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§§ 131.51 and 131.53 [Removed and Reserved]

19. Sections 131.51 and 131.53 are removed and reserved.

§ 131.52 [Amended]

20. In § 131.52, the words ''(An original and one conformed copy to be submitted)'' are removed.

PART 154—RATE SCHEDULES AND TARIFFS

21. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

§ 154.2 [Amended]

22. In § 154.2, paragraph (b), the words ''either in book form or'' are removed.

23. Section 154.4 is revised to read as follows:

§ 154.4 Electronic filing of tariffs and related materials.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, service agreements, and contracts, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs. Paper submittals are not required.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

§ 154.5 [Amended]

24. In § 154.5, the words ''375.307 (b)(2)'' are removed and the words ''part 375'' are added in their place.

§ 154.101 [Removed and Reserved]

25. Section 154.101 is removed and reserved.

26. Section 154.102 is revised to read as follows:

§ 154.102 Requirements for filing rate schedules and tariffs.

(a) All rates schedules, tariffs, and service agreements may be filed either by dividing the rate schedule, tariff, or agreement into individual tariff sheets, or tariff sections, or as an entire document except as provided in paragraph (b) of this section.

(b) Open Access Transmission Tariffs must be filed either as individual sheets or sections. If filed as sections, each section must include only material of related subject matter and must be of reasonable length. Individual negotiated rate agreements, non-conforming service agreements, or other agreements that are included in the tariff may be filed as entire documents.

27. Section 154.104 is revised to read as follows:

§ 154.104 Table of contents.

The table of contents must contain a list of the rate schedules, sections of the general terms and conditions, and other sections in the order in which they appear, showing the sheet number of the first page of each section or the section number. The list of rate schedules must consist of: The alphanumeric designation of each rate schedule, a very brief description of the service, and the sheet number of the first page of each rate schedule or the section number.

§ 154.106 [Amended]

28. In § 154.106, paragraph (b) is removed and reserved.

§ 154.112 [Amended]

29. Amend § 154.112 as follows:

a. In paragraph (a) remove the word ''page'' and add in its place ''page or section''.

b. In paragraph (a) remove the words ''or insert sheets'' and add in their place ''inserted sheets or sections''.

30. Section 154.201 (a) is revised to read as follows:

§ 154.201 Filing requirements.

* * * * *

(a) A list in the transmittal letter of the tariff pages or sections being revised and a marked version of the pages or sections to be changed or superseded showing additions and deletions. New numbers and text must be marked by either highlight, background shading, bold, or underline. Deleted text and numbers must be indicated by strike-through. Only those revisions appropriately designated and marked constitute the filing. Revisions to unmarked portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

* * * * *

31. Section 154.205 is amended as follows:

a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (c), (d), and (e), respectively.

b. The section heading is revised, and paragraphs (a) and (b) are added to read as follows:

§ 154.205 Withdrawals and amendments of tariff filings and executed service agreements.

(a) *Withdrawals of tariff filings or service agreements prior to Commission action.* (1) A natural gas company may withdraw in its entirety a tariff filing or executed service agreement that has not become effective and upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed tariff sections or service agreements will not become effective under section 4(d) of the Natural Gas Act in the absence of Commission action making the rate schedule or tariff filing effective.

(2) The withdrawal motion will become effective, and the rate schedule or tariff filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to tariff sections or service agreements prior to Commission action on a tariff filing.* A natural gas company may file to amend or modify a tariff or service agreement contained in a tariff filing upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 4(d) of the Natural Gas Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 31 days from the date of the filing of the amendment or modification.

* * * * *

32. In § 154.208, paragraph (d) is revised and paragraphs (e) and (f) are added to read as follows:

§ 154.208 Service on customers and other parties.

* * * * *

(d) A customer or other party may designate a recipient of service. The filing company must serve the designated recipient, in accordance with this section, instead of the customer or other party. For the purposes of this section, service upon the designated recipient will be deemed service upon the customer or other party.

(e) The company may choose to effect service either electronically or by paper. Such service must be made in accordance with the requirements of part 385 of this chapter.

(f) Unless it seeks a waiver of electronic service, each customer or party entitled to service under this section must notify the company of the e-mail address to which service should be directed. A customer or party may seek a waiver of electronic service by filing a waiver request under part 390 of this chapter, providing good cause for its inability to accept electronic service.

§ 154.209 [Removed and Reserved]

33. Section 154.209 is removed and reserved.

§ 154.402 [Amended]

34. In § 154.402, paragraph (b)(1), the word ''schedules'' is removed and the words ''rate schedules'' are added in its place.

§ 154.602 [Amended]

35. Section 154.602 is amended by removing the phrase ''on the form indicated in § 250.2 or § 250.3 of this chapter, whichever is applicable'' and adding in its place the phrase ''tariff filing in the electronic format required by § 154.4''.

36. Section 154.603 is revised as follows:

§ 154.603 Adoption of the tariff by a successor.

Whenever the tariff or contracts of a natural gas company on file with the Commission is to be adopted by another company or person as a result of an acquisition, or merger, authorized by a certificate of public convenience and necessity, or for any other reason, the succeeding company must file with the Commission, and post within 30 days after such succession, a tariff filing in the electronic format required by § 154.4 bearing the name of the successor company.

§§ 154.7, 154.111, 154.202, 154.206, 154.208, 154.402, and 154.403 [Amended]

37. In addition to the amendments set forth above, in 18 CFR part 154, the following nomenclature changes are made to the sections as amended:

a. In §§ 154.7(a)(5), 154.111(c), 154.202(b), 154.206(a), 154.208(a), all references to ''sheets'' are removed and ''sheets or sections'' is added in their place.

b. In §§ 154.402(b) introductory text, 154.402(b)(3), 154.403(b), all references to ''sheet'' are removed and ''sheet or section'' is added in their place.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

38. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w.

39. Amend § 157.217 by adding a sentence to the end of paragraph (a)(4) to read as follows:

§ 157.217 Changes in rate schedules.

(a) * * *

(4) * * * This tariff filing must be filed in the electronic format required by § 154.4 of this chapter.

* * * * *

PART 250—FORMS

40. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352.

§§ 250.2, 250.3, and 250.4 [Removed and Reserved]

41. Sections 250.2, 250.3, and 250.4 are removed and reserved.

PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978

42. The authority citation for part 281 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352.

43. In § 281.204, the first sentence in paragraph (a) is revised to read as follows:

§ 281.204 Tariff filing requirements.

(a) *General Rule.* Each interstate pipeline listed in § 281.202 shall file tariff sheets, in accordance with § 154.4 of this chapter, including an index of entitlements, which provides that if the interstate pipeline is in curtailment, natural gas will be delivered in accordance with the provisions of this subpart. * * *

* * * * *

§§ 281.204, 281.212, 281.213 [Amended]

44. In addition to the amendments set forth above, in 18 CFR part 281, the following nomenclature changes are made to the sections as amended:

a. In §§ 281.204(a), 281.212(a), 281.212(b), 281.212(c), 281.213(b), 281.213(d), 281.213(e), all references to ''sheets'' are removed and ''sheets or sections'' is added in their place.

b. In § 281.212, the section heading is amended to remove the reference to ''sheets.''

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

45. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

46. In § 284.123, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 284.123 Rates and charges.

* * * * *

(e) *Filing requirements.* Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to paragraph (b) of this section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions, such as, quality standards and financial viability of the shipper. If the pipeline changes its operations, rates, or rate election under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations or the change in rate election.

(f) *Electronic filing of statements, and related materials.* (1) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including rates and charges, or parts thereof, and material related thereto, statements, and all workpapers. Paper submittals are not required to be filed.

(2) *Requirements for signature.* All filings must be signed in compliance with the following:

(i) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

(B) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(C) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(iii) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(3) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

47. In § 284.224, paragraph (e)(5) is revised to read as follows:

§ 284.224 Certain transportation and sales by local distribution companies.

* * * * *

(e) * * *

(5) *Filing Requirements.* Filings under this section must comply with the requirements of § 284.123(f) of this part. The tariff filing requirements of part 154 of this chapter shall not apply to transactions authorized by the blanket certificate.

* * * * *

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

48. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 825s, 832–832l, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

49. In § 300.10, paragraph (a)(4) is added to read as follows:

§ 300.10 Application for confirmation and approval.

(a) * * *

(4) *Electronic filing.* All material must be filed electronically in accordance with the requirements of § 35.7 of this chapter. Paper submittals are not required to be filed.

* * * * *

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

50. The authority citation for part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

51. In § 341.0, paragraph (a)(11) is revised and paragraph (a)(13) is added to read as follows:

§ 341.0 Definitions; application.

(a) * * *

(11) *Tariff publication* means all parts of a filed tariff, including revised pages, and supplements and sections.

* * * * *

(13) *Section* means an individual portion of a tariff that is tracked and accorded appropriate legal status (proposed, suspended, effective). A section is the smallest portion of a tariff that can be submitted as part of a tariff filing.

* * * * *

52. Section 341.1 is revised to read as follows:

§ 341.1 Electronic filing of tariffs and related materials.

(a) *General rule.* All filings of tariff publications and related materials made in proceedings initiated under this part must be made electronically. Paper submittals are not required.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

53. Section 341.2 is amended as follows:

a. Paragraph (c)(3) is removed.

b. In paragraph (c)(1), the reference to '' or supplement numbers'' is removed and ''supplemental numbers, or tariff sections'' is added in its place.

c. Paragraphs (a) and (c)(2) are revised to read as follows:

§ 341.2 Filing requirements.

(a) *Service of filings.* (1) Carriers must serve tariff publications and justifications to each shipper and subscriber. The company may choose to effect service either electronically or by paper. Such service shall be made in accordance with the requirements of part 385 of this chapter.

(2) Unless it seeks a waiver of electronic service, each customer or party entitled to service under this paragraph (a) must notify the company of the email address to which service should be directed. A customer or party may seek a waiver of electronic service by filing a waiver request under part 390 of this chapter providing good cause for its inability to accept electronic service.

* * * * *

(c) * * *

(2) *Certification.* Letters of transmittal must certify that the filing has been sent to each subscriber of the tariff publication pursuant to paragraph (a) of this section. If there are no subscribers, letters of transmittal must so certify.

54. In § 341.3, paragraphs (a), (b)(6)(ii), and (b)(10)(i) are revised, and paragraph (b)(10)(vi) is added to read as follows.

§ 341.3 Form of tariff.

(a) Tariffs may be filed either by dividing the tariff into individual loose-leaf tariff sheets or tariff sections, or as an entire document.

(b) * * *

(6) * * *

(ii) Each rule must be given a separate item number, (e.g., Item No. 1), and the title of each rule must be distinctive.

* * * * *

(10) * * *

(i) All tariff publications must identify where changes have been made in existing rates or charges, rules, regulations or practices, or classifications. One of the following letter designations or uniform symbols may be used to indicate the change, and insertions, other than to tables and rates, must be indicated by either highlight, background shading, bold, or underline, with deleted text indicated by strike-through.:

Description	Option 1	Option 2
Increase	±	[I]
Decrease	~	[D]
Change in wording only	—	[W]
Cancel	}	[C]
Reissued Item	=	[R]
Unchanged Rate	{	[U]
New	*	[N]

* * * * *

(vi) Only revisions that are marked appropriately constitute the filing. Revisions to unmarked portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

* * * * *

§ 341.4 [Amended]

55. In § 341.4, paragraph (c) is removed and reserved.

56. In § 341.13, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

§ 341.13 Withdrawal of proposed tariff publications.

(a) *Proposed tariff publications.* A proposed tariff publication which is not yet effective may be withdrawn at any time by filing a notice with the Commission with a certification that all subscribers have been notified by copy of such withdrawal.

(b) *Tariff publications that are subject to investigation.* A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by filing a notice with the Commission, which includes a transmittal letter, a certification that all subscribers have been notified of the withdrawal, and the previous tariff provisions that are to be reinstated upon withdrawal of the tariff publication under investigation. Such withdrawal shall be effective immediately upon the submission of the notice, unless a specific effective date is set forth in the notice, and must have the following effects:

* * * * *

PART 344—FILING QUOTATIONS FOR U.S. GOVERNMENT SHIPMENTS AT REDUCED RATES

57. The authority citation for part 344 continues to read as follows:

Authority: 42 U.S. 7101–7352; 49 U.S.C. 1–27.

58. Amend § 344.2 as follows:

a. Remove and reserve paragraph (b).

b. Revise paragraphs (a) and (c) to read as follows:

§ 344.2 Manner of submitting quotations.

(a) The quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(b) [Reserved]

(c) *Filing procedure.* (1) The quotation must be filed with a letter of transmittal that prominently indicates that the

filing is in accordance with section 22 of the Interstate Commerce Act.

(2) All filings pursuant to this part must be filed electronically consistent with §§ 341.1 and 341.2 of this chapter.

* * * * *

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

59. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

60. In § 346.1, the introductory text is revised to read as follows:

§ 346.1 Content of filing for cost-of-service rates.

A carrier that seeks to establish rates pursuant to § 342.2(a) of this chapter, or a carrier that seeks to change rates pursuant to § 342.4(a) of this chapter, or a carrier described in § 342.0(b) of this chapter that seeks to establish or change rates by filing cost, revenue, and throughput data supporting such rates, other than pursuant to a Commission-approved settlement, must file, consistent with the requirements of §§ 341.1 and 341.2 of this chapter:

* * * * *

PART 347—OIL PIPELINE DEPRECIATION STUDIES

61. The authority citation for part 347 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

62. In § 347.1, remove and reserve paragraph (b), remove the last two sentences of paragraph (c), and revise paragraph (a) to read as follows:

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

(a) *Means of filing.* Filing of a request for new or changed property account depreciation rates must be made under this part 347 and must be consistent with §§ 341.1 and 341.2 of this chapter.

* * * * *

b. Remove and reserve paragraph (b).

c. In paragraph (c), remove the last two sentences.

PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

63. The authority citation for part 348 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

64. In § 348.2, paragraphs (a) and (c) are revised to read as follows:

§ 348.2 Procedures.

(a) A carrier must file in the manner provided by §§ 341.1 and 341.2 of this chapter. A carrier must submit with its application any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement.

* * * * *

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.1(b) of this chapter.

* * * * *

PART 375—THE COMMISSION

65. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

66. Amend § 375.307 as follows:

a. Paragraph (b)(1)(i) is amended by removing the word ''and'' from the end of the paragraph.

b. Paragraph (b)(1)(ii) is amended by removing the period at the end of the paragraph and adding ''; and'' in its place.

c. Paragraph (b)(1)(iii) is added to read as follows:

§ 375.307 Delegations to the Director of the Office of Energy Market Regulation.

* * * * *

(b) * * *

(1) * * *

(iii) Filings for administrative revisions to electronic filed tariffs.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

67. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441,16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

§ 385.203 [Amended]

68. In § 385.203, paragraph (a)(4), the reference to ''sheets'' is removed and ''sheets or sections'' is added in its place.

69. In § 385.215, paragraph (a)(2) is amended to add a first sentence to read as follows:

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) * * *

(2) A tariff or rate filing may be amended or modified only as provided in the regulations under this chapter.

* * *

* * * * *

70. In § 385.216, the heading and paragraph (a) is revised to read as follows:

§ 385.216 Withdrawal of pleadings and tariff or rate filings (Rule 216).

(a) *Filing.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to withdraw a pleading by filing a notice of withdrawal. The procedures provided in this section do not apply to withdrawals of tariff or rate filings, which may be withdrawn only as provided in the regulations under this chapter.

* * * * *

§ 385.217 [Amended]

71. In § 385.217, paragraph (d)(1)(iii), the reference to ''sheets'' is removed and ''sheets or sections'' is added in its place.

§ 385.2011 [Amended]

72. In § 385.2011, paragraph (b)(1) is removed and reserved, and paragraphs (b)(4) and (b)(5) are removed.

[FR Doc. E8–9297 Filed 4–28–08; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB01

[Docket ID ED–2008–OESE–0003]

Title I of the Elementary and Secondary Education Act of 1965

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of public meetings on the proposed regulations for Title I of the Elementary and Secondary Education Act of 1965.

SUMMARY: On April 23, 2008, the Secretary of Education (Secretary) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (73 FR 22020) to amend the regulations implementing Title I of the Elementary and Secondary Education Act of 1965, as reauthorized by the No Child Left Behind Act of 2001 (NCLB). The Secretary announces a series of public meetings to seek public

comments on these proposed regulations.

Dates, Times, and Locations of Public Meetings: See **SUPPLEMENTARY INFORMATION** section for meeting dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Zollie Stevenson, Jr., U.S. Department of Education, 400 Maryland Ave., SW., room 3W230, Washington, DC 20202–6132. *Phone:* at 202–260–1824. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 23, 2008, the Secretary published an NPRM in the **Federal Register** (73 FR 22020) to amend certain of the Title I regulations. The purpose of these proposed regulations is to build on the advancements of State accountability and assessment systems over the six years since NCLB was signed into law, while incorporating key feedback from the field into an even clearer vision of what it takes to educate each and every one of our Nation's school children. The proposed regulations would clarify and strengthen current Title I regulations in the areas of assessment, accountability, supplemental educational services (SES), and public school choice. Issuing regulations that strengthen Title I implementation in these areas will help bring about higher-quality assessments and stronger accountability for results, as well as provide parents with the information they need to make informed decisions about public school choice and SES. A copy of the NPRM is available at *http://www.ed.gov/policy/elsec/reg/proposal/index.html.*

The Department is accepting public comments on the NPRM through June 23, 2008. Comments must be submitted in writing to the Department in accordance with the instructions in the NPRM. We look forward to receiving your comments on these proposed regulations to ensure that they accomplish our intended objectives.

Public Meetings

The Department will also be holding four public meetings to receive comments on the NPRM. The meetings will occur on the following dates at the times and locations indicated:

Wednesday, May 14, 2008

Hilton Boston Back Bay Hotel, 40 Dalton Street, Boston, MA 02115, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Fenway Room.

Thursday, May 15, 2008

Georgia Perimeter College, Dunwoody Campus, 2101 Womack Road, Dunwoody, GA 30338, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Auditorium, C1100, North Campus.

Monday, May 19, 2008

Sheraton Kansas City Sports Complex Hotel, 9103 East 39th Street, Kansas City, MO 64133, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Royal Ballroom.

Thursday, May 22, 2008

W Hotel, 1112 4th Avenue, Seattle, WA 98101, *Time:* 9 a.m.–12 p.m. & 2 p.m.–5 p.m., *Meeting Room:* Great Room 1.

Individuals who wish to present comments during a public meeting should register at *Special.Events@ed.gov* at least one week before the public meeting. Any meeting time that remains after the Web site registrations are processed will be made available on the day of the meeting. Individuals who have not registered on the Web site and who wish to present comments should do so at the on-site registration desk on the day of the meeting. We will process Web-site and on-site registrations on a first-come, first-served basis.

Each individual will be allowed three minutes to present comments. Individuals are requested to submit three written copies and an electronic file (CD or diskette) of their comments at the meeting, which should be labeled with their name and contact information. Transcripts of these meetings, along with any written comments received, will be made a part of the official rulemaking record.

The meeting site is accessible to individuals with disabilities. Individuals who need accommodations in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, materials in alternative formats) should notify Frances Hopkins at *Special.Events@ed.gov* or call 202–205–6268 no later than 14 days prior to the meeting the individual will attend. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability.

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official 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 24, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–9351 Filed 4–28–08; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0336; FRL–8559–3]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Idaho's State Implementation Plan (SIP) relating to open burning and crop residue disposal requirements and visible emissions. The Director of the Idaho Department of Environmental Quality (IDEQ) submitted a draft SIP revision to the EPA on April 15, 2008. The EPA is proposing to approve this draft SIP revision at Idaho's request because, if adopted by the State in its current form, it would satisfy the requirements of the Clean Air Act (hereinafter the Act or CAA). The State has scheduled a public hearing on this draft revision for May 2, 2008.

The Director of the IDEQ also submitted a SIP revision relating to open burning and crop residue disposal requirements on May 22, 2003, which the EPA approved on July 11, 2005 (70 FR 39658). A State public hearing for this revision was held on September 11, 2002. In a ruling issued on January 30, 2007, and amended on May 29, 2007, that approval was remanded and vacated by the U.S. Court of Appeals for the 9th Circuit in *Safe Air for Everyone* v. *USEPA,* 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007) (SAFE decision). The EPA is re-proposing to approve the portion of the May 22, 2003, SIP revision that would not be changed by the draft SIP revision, if adopted, submitted on April 15, 2008. We are proposing to approve this portion of the SIP revision because it satisfies the requirements of the Act and does not contravene the Court's SAFE decision.

DATES: Written comments must be received on or before *May 29, 2008.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10-OAR–2008–0336, by one of the following methods:

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

B. *Mail:* Donna Deneen, EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101

C. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Donna Deneen, Office of Air Waste, and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2008–0336. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553–6706, or by e-mail at *R10–Public_Comments@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

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I. Background

The EPA is proposing to approve revisions to Idaho's SIP relating to open burning and crop residue disposal requirements and to a provision addressing visible emissions. This proposed approval encompasses a draft revision (IDAPA 58.01.01.600–603, 606, 617–623, and 625), submitted by the IDEQ on April 15, 2008 (the 2008 draft SIP revision request) and a portion of a revision request (IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616) submitted by the IDEQ on May 22, 2003. (We will refer to this portion of the May 22, 2003, SIP revision request as the ''2003 SIP revision request.'')

Idaho has requested that the EPA ''parallel process'' the 2008 draft SIP revision request. Parallel processing means that the EPA proposes rulemaking action on a state's rule revision before the state regulation is adopted in final form under state law. See 40 CFR part 51, appendix V, section 2.3. Parallel processing generally saves total processing time and allows the SIP revision, if approved, to become effective sooner than under the traditional federal review process. Under the traditional process the EPA does not first propose to approve or disapprove a SIP revision request until it has been finally adopted under state law. Under parallel processing, the EPA may take final action to approve a SIP revision request if the final version of the adopted state submission remains substantially unchanged from the submission on which the proposed approval rulemaking was based. If there are significant changes in the State's final submission, the EPA would not take final action approving this proposal.

The EPA is not parallel processing the portion of the 2003 SIP revision request that would not be changed by the 2008 draft SIP revision request, if adopted. This portion of the 2003 SIP revision request has already been through the state public process and adopted in its final form under state law, and remains officially submitted to the EPA. We expect that Idaho will make no further changes to these already adopted and submitted provisions. Therefore it is not necessary to parallel process the request to approve these revisions. Rather, in today's notice the EPA proposes to approve these provisions as currently adopted under State law, based on our expectation that they will not be changed in the State's adoption of its 2008 SIP revision request.

History of the 2003 and 2008 SIP Revision Requests

On May 22, 2003, Idaho submitted to the EPA a requested revision to its SIP relating to open burning and crop residue disposal requirements. This 2003 SIP revision request contained a number of changes including editorial changes, the addition of a provision regarding the immediate abatement of open burning in emergencies, removal of a provision regarding discretionary approval of alternatives to open burning, and the addition of a provision to specify that crop residue burning was an allowable form of open burning.

On July 11, 2005, the EPA approved Idaho's 2003 SIP revision request, explaining that we considered it to be a clarification of Idaho's prior SIP rather than a substantive amendment. 70 FR 39658 and 70 FR 41963 (2005 SIP approval). A citizen's group filed a petition for judicial review of our 2005 SIP approval in the U.S. Court of Appeals for the 9th Circuit, claiming that the approval relaxed the existing SIP and that we were incorrect in viewing the 2003 SIP revision request as a clarification of the prior SIP. (*Safe Air for Everyone* v. *USEPA*, 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007)). On January 30, 2007 (as amended on May 29, 2007), the Court granted the

petition for review, vacated the 2005 SIP approval, and remanded the matter to the EPA.

Subsequent to the remand, Idaho initiated a negotiated process to revise the challenged portions of the 2003 SIP revision request. As described in more detail below, this negotiated process included discussions with representatives of the State, the IDEQ, the Idaho State Department of Agriculture (ISDA), Safe Air For Everyone, (SAFE), numerous agricultural organizations, and farmers who burn crop residue. As a result of the negotiations, the State has revised its approach to the open burning of crop residue, enacted new legislation addressing the practice, and has developed draft rules for submission to the EPA.

II. Proposed Action

For the reasons discussed below, this action proposes to approve the State's draft revised open burning rules, including the revisions to allow the open burning of crop residue, and the provision addressing visible emissions. More specifically, we are proposing to approve the 2008 draft SIP revision request (IDAPA 58.01.01.600–603, 606, 617–623, and 625) that includes both draft changes to the general open burning rules that were contained in the 2003 SIP revision request and draft changes to those rules that specifically relate to crop residue burning. We are also proposing to approve the portion of the 2003 SIP revision request (IDAPA 58.01.01.604, 607–610, 612, 613, 615 and 616) that would not be changed by the 2008 draft SIP revision request and that is currently not part of the federally approved Idaho SIP due to the Court's remand and vacatur of our 2005 SIP approval of the 2003 submission. We are proposing to approve the draft 2008 revisions and the unchanged 2003 submission provisions because they meet the requirements of the Clean Air Act.

For organizational ease, section A below provides a discussion of the changes submitted to IDAPA 58.01.01.600 through 616, which we will refer to as Idaho's general open burning rules. Section B below discusses IDAPA 58.01.01.617 through 623, which we will refer to as Idaho's crop residue burning rules. We will also discuss in Section B the provision addressing visible emissions at IDAPA 58.01.01.625.05 and a new statutory provision, Idaho House Bill 557, which authorizes the open burning of crop residue and the IDEQ's adoption of implementing rules.

The EPA has also prepared a Technical Support Document (TSD) with more detailed information about the SIP revisions Idaho has asked us to approve. The TSD is available for review as part of the docket for this action.

A. General Open Burning Rules at IDAPA 58.01.01.600 through 616

Due to the Court's remand and vacatur of our 2005 SIP approval of the 2003 SIP revision request, our most recent approval of the general open burning rules in Idaho's SIP that remains in effect was published on January 16, 2003 (68 FR 2217) (2003 SIP approval). That 2003 SIP approval was not challenged by any party. Since then, the IDEQ has made a number of changes to its general open burning rules. IDAPA 58.01.01.600–616. These changes were submitted in both the 2003 SIP revision request and the 2008 draft SIP revision request, and include the following: Minor modifications of existing language, the addition of a provision related to emergency authority, and the deletion of a never-used provision relating to alternatives to open burning.

Minor Modifications to Existing Language

The IDEQ made minor modifications to the language in IDAPA 58.01.01.600–602, 606–610, 612–613, and 615–616. These modifications to existing language are either editorial revisions, clarifications of existing provisions, or process revisions. The TSD identifies each provision, indicates whether it was submitted in the 2003 or 2008 SIP revision requests, and describes how the modification compares to the existing federally approved SIP as reflected in the 2003 SIP approval. By the nature of these types of modifications, they have no substantive impact on rule requirements and, therefore, meet the requirements of the Act and are approvable.

Emergency Authority Provision

The IDEQ also revised IDAPA 58.01.01.603.02 to provide that ''In accordance with Title 39, Chapter 1, Idaho Code, the Department [IDEQ] has the authority to require immediate abatement of open burning in cases of an emergency requiring immediate action to protect human health or safety.'' This provision, submitted as part of the 2003 SIP revision request, reiterates the existing authority provided in Title 39, Chapter 1, Idaho Code (and approved in the unchallenged 2003 SIP approval) to require immediate abatement of air pollution in emergency cases and clarifies that the emergency authority may be used for open burning. Idaho Code section 39–112. Because the addition of this provision clarifies and does not change the IDEQ's emergency authority in the existing SIP to protect human health or safety, it is approvable.

Alternatives to Open Burning.

In the 2003 SIP revision request, the IDEQ also deleted IDAPA 58.01.01.604—Alternatives to Open Burning, from its rules. Under this provision, two years from the date an economical and reasonable alternative to a specific usage of open burning is approved by the Director of the IDEQ, that usage of open burning is no longer allowed. Under IDAPA section 58.01.01.604, the approval of alternatives is discretionary and to date has not been used. While the EPA continues to encourage alternatives to open burning, the removal of this provision has no substantive impact on existing federally-approved requirements that would have been affected had the IDEQ Director ever approved such an alternative. Therefore we propose to approve the removal of section 58.01.01.604 from the Idaho SIP.

In light of the nature of the revisions discussed above to IDAPA 58.01.01.600–602, 606–610, 612–613, and 615–616 (editorial, process revisions, clarification of the emergency provision, and the deletion of a discretionary and never-used before provision), we are proposing to approve these revisions because they meet all of the requirements of the Clean Air Act. See the Technical Support Document for specific comparisons of these revisions to the existing federally approved SIP as reflected by the 2003 SIP approval.

B. Crop Residue Disposal Rules at IDAPA 58.01.01.617 through 623, Provision Addressing Visible Emissions at IDAPA 58.01.01.625 and New Legislation

The crop residue disposal rules at IDAPA 58.01.01.617 through 623 and the provision addressing visible emissions at IDAPA 58.01.01.625 and accompanying materials supporting these rules are contained in the 2008 draft SIP revision request. According to the 2008 draft SIP revision request, these rules were submitted as a result of the Ninth Circuit Court of Appeals decision in *Safe Air for Everyone* v. *USEPA*, 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007) and of the subsequent efforts of stakeholders. The stakeholders negotiated an agreement after the Court's decision to ensure protection of the public health and the

environment and that allows growers to burn crop residue when certain conditions are met.

Below is a history of the 2008 draft SIP revision request, the stakeholder agreement points, our analysis of the resulting statute and administrative rules, and the basis for our proposed approval of these provisions in the 2008 SIP revision request.

1. Background

The open burning of agricultural fields is a historic agricultural practice in Idaho. As early as 1970, Idaho adopted open burning rules that specifically included agricultural burning as a category of allowable burning. The EPA approved these provisions into the Idaho SIP on May 31, 1972, and re-approved them on July 28, 1982. 37 FR 10861 and 47 FR 32530.[1] A series of events, including the Idaho Legislature's enactment of the 1985 Smoke Management Act (House Bill 246, 41st Legislature, 1985), which specifically acknowledged crop residue burning and prohibited the IDEQ from regulating it, led to the subsequent submission of a SIP revision in the early 1990s that no longer included crop residue burning as an allowable form of open burning. The EPA approved this revision to Idaho's SIP on July 23, 1993. 58 FR 39445. (As further addressed below, it was this EPA SIP approval in 1993 that first rendered, albeit unintentionally, open burning of agricultural fields a prohibited act under the approved Idaho SIP, as interpreted by the 9th Circuit.)

In 1999, the Idaho Legislature repealed the 1985 Smoke Management Act and in its place enacted the Smoke Management and Crop Residue Disposal Act (House Bill 342, 55th legislature, 1999). This Act authorized ISDA to promulgate rules regarding crop residue disposal and removed the prohibition against the IDEQ from doing so. The IDEQ subsequently amended its rules to recognize the open burning of crop residue. This rule, IDAPA 58.01.01.617, was submitted in 2003 to the EPA as a SIP clarification and the EPA approved that rule in 2005. 70 FR 39658 (July 11, 2005). SAFE filed a petition for judicial review, asserting that the SIP previously prohibited crop residue burning and now allowed it as a result of the EPA's 2005 approval of the 2003 SIP revision request. SAFE claimed that the EPA incorrectly viewed the previously approved SIP as already allowing open burning of agricultural fields. The Ninth Circuit Court of Appeals agreed with SAFE's arguments, granted the petition for review, vacated the EPA's 2005 SIP approval of the 2003 SIP revision request, and remanded it back to the EPA to consider the amendment a change to the pre-existing SIP rather than a clarification. The Ninth Circuit determined that the pre-existing SIP did not allow the open burning of crop residue and that further analysis under Clean Air Act sections 110(l) and 193 by the EPA was required. The decision made clear that under the existing federally approved SIP, open burning of crop residue on state lands in Idaho was prohibited.

Subsequent to the Ninth Circuit's decision, the parties to the lawsuit, and other key stakeholders, began discussions regarding the open burning of crop residue (crop residue burning) program and the SIP revision submittal components required to satisfy the Act. Central parties to these discussions included representatives from SAFE, IDEQ, ISDA, and numerous agricultural organizations and farmers who burn crop residue. EPA did not participate directly in the stakeholder discussions, but was kept informed of their progress. After several months of discussion, an independent mediator was hired by the State to assist in the negotiation of an agreement among the non-federal stakeholders.

In December 2007, agreement points among the non-federal stakeholders were reached. The State summarizes the agreement in the 2008 draft SIP revision request as an agreement (1) that DEQ would administer the crop residue burning program (in the past the ISDA administered the program), (2) to model the program after the Nez Perce Tribe crop residue burning program, specifically to protect air quality to 75% of the NAAQS, (3) to incorporate the transparency aspects of the Washington State Department of Ecology program, (4) to examine the adequacy of the existing monitoring network, (5) to build in cooperation with other smoke management regulators, (6) to conduct monitoring and exposure studies if grant money is available, and (7) to conduct an air quality analysis prior to authorizing the annual open burning of 20,000 acres or more of bluegrass.

Legislation

Subsequent to the December 2007 agreement among the non-federal stakeholders, House Bill 557 was drafted to reflect the agreement points. The bill was passed by the Idaho Legislature, signed by the Governor and became effective on March 7, 2008.

House Bill 557 adds a new section, section 38–114, to the Environmental Protection and Health Act. This section establishes a crop residue program within the IDEQ. It specifically provides that the open burning of crop residue to develop physiological conditions conducive to increase crop yields, or control diseases, insects, pests or weed infestations, shall be an allowable form of open burning, such that it is expressly authorized as referenced in Section 52–108 Idaho Code,[2] so long as the open burning is conducted in accordance with the provisions of this section and the rules promulgated pursuant to this chapter. It also amends Idaho's Public Records Act to allow for the disclosure of information regarding property locations of fields to be burned, persons responsible for the burn, and acreage and crop type for crop residue to be burned.

Importantly, the Bill also requires any person desiring to burn crop residue to obtain prior approval from the IDEQ, and, further, provides that the IDEQ is prohibited from approving a burn if it determines that ambient air quality levels: ''(a) [a]re exceeding, or are projected to exceed, seventy-five percent (75%) of the level of any national ambient air quality standard (NAAQS) on any day, and these levels are projected to continue or recur over at least the next twenty-four (24) hours; or (b) [h]ave reached, or are forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter pursuant to section 556 of IDAPA 58.01.01, rules for the control of air pollution in Idaho.'' Idaho Code Section 39–114(3)(a).

House Bill 557 also explains that IDEQ will make available to the public, prior to the burn, information regarding the date of the burn, location, acreage and crop type. Furthermore, the Bill requires the IDEQ to conduct additional air quality analysis if the agricultural community desires to burn more than 20,000 acres of bluegrass within the state. Additionally, the Bill requires a $2/acre fee be paid to IDEQ prior to burning.

Negotiated Rulemaking

After House Bill 557 was passed, the Idaho Department of Environmental Quality Board adopted rules implementing House Bill 557 and reflecting the December 2007 agreement relating to crop residue disposal. At the same time, a provision addressing visible emissions was added at IDAPA

[1] Section 1153.08 of these rules specifically identifies agricultural burning as a category of allowable burning.

[2] Section 52–103 Idaho Code provides ''Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.''

58.01.01.625.05 providing that the visible emissions requirements in IDAPA 58.01.01.625 shall not apply to the open burning of crop residue. These crop residue disposal rules and the new provision addressing visible emissions were developed through Idaho's negotiated rulemaking process.[3] This process was open to the public and included representatives from the negotiation team. The rules and visible emissions provision became effective on April 2, 2008. A state public hearing is scheduled for May 2, 2008.

In summary, the negotiated rules provide for the open burning of crop residue through a *Permit by Rule* program at IDAPA 58.01.01.617 through 623 and address visible emissions requirements at IDAPA 58.01.01.625.05. These rule changes are discussed below.

Description of the Crop Residue (Permit by Rule) Burning Program

IDAPA 58.01.01.617 provides that the open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with provisions contained in IDAPA 58.01.01.618 through 623. Under these rules, no person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. IDAPA 58.01.01.618 contains the general requirements for obtaining a permit by rule, IDAPA 58.01.01.619 and 620 contain the registration and fee requirements for obtaining a permit by rule, IDAPA 58.01.01.621 contains burn determination criteria and a Web site notification process, IDAPA 58.01.01.622 provides general provisions (covering such items as training requirements, reporting requirements, and certain limitations on burning), and IDAPA 58.01.01.623 provides requirements for public notification. In brief, under these requirements, a person desiring to burn crop residue must register at least thirty days in advance of the date of the proposed burn, pay a fee at least seven days prior to the burn, contact DEQ for initial approval at least 12 hours prior to the burn, obtain final approval from the IDEQ the morning of the burn, and submit a post-burn report to the IDEQ. In addition, all persons intending to dispose of crop residue through burning must abide by all of the general provisions in IDAPA 58.01.01.622.

The burn criteria for the IDEQ to approve a request to burn are described in IDAPA 58.01.01.621. Importantly, before approving a permittee's request to burn, the IDEQ must determine that ambient air quality levels do not exceed seventy five percent of the level of any National Ambient Air Quality Standards (NAAQS) on any day and are not projected to exceed such level over the next 24 hours. In addition, the IDEQ must determine that ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent of the one hour action criteria for particulate matter under IDAPA 58.01.01.556.[4] Thus, IDEQ will not approve a burn if these levels are expected to be exceeded as a result of the burn. In determining whether to approve the burn, DEQ must consider the expected emissions from the proposed burn, the proximity of the proposed burn to other burns, the moisture content of the fuels, the acreage, crop type and other fuel characteristics, existing and expected meteorological conditions, the proximity of the proposed burn to institutions with sensitive populations, public roadways, and airports, and other relevant factors. IDAPA 58.01.01.621.01. The IDEQ must also notify the public as provided in IDAPA 58.01.01.623.

The new rules include a number of general provisions that apply to all persons intending to dispose of crop residue through burning. For example, the rules allow burning to be conducted only on designated burn days, and provide that burning shall not be conducted on weekends, holidays or after sunset or before sunrise. Additionally, the person conducting the burn must have a portable communication device, like a cellular phone; must attend crop residue burning training; and must submit a post burn report to IDEQ. IDAPA 58.01.01.622.01.

An Operating Guide to be developed by IDEQ will serve as the main crop residue burning Smoke Management Program implementation tool. The Operating Guide will incorporate the applicable agreement points in the December 2007 agreement, air quality rule requirements, elements of the Nez Perce smoke management program, elements of the Washington smoke management program, and elements specific to Idaho's program including specific meteorological, air quality, and burn parameters required for burn approval. More information about the Operating Guide can be found in Section 6.1.6 of the 2008 draft SIP revision request.

The IDEQ has not submitted this Operating Guide as part of its 2008 SIP revision request, and the EPA is not relying on it, or its details, for purposes of proposing approval of the SIP. Further, the Operating Guide may not be read, or be changed, in a way that substantively modifies the terms that are approved into the SIP. Only by formally adopting under State law and submitting revised statutory and/or regulatory requirements to the EPA, may a State seek to revise its federally approved and enforceable SIP, and EPA approval of such submission is required before a SIP's enforceable requirements may be modified. Therefore, the EPA considers Idaho's Operating Guide, once it is developed, to not have any potential effect on the SIP requirements we are proposing to approve today.

Provision Addressing Visible Emissions at IDAPA 58.01.01.625

IDAPA 58.01.01.625.05 contains a general 20% opacity visible emission limitation and provides that EPA Method 9 at 40 CFR Part 60 is generally the appropriate test method. In 2008, as part of the negotiated rulemaking, IDEQ added a new provision to IDAPA 58.01.01.625 to specify that section 625 ''shall not apply to the open burning of crop residue.'' Section 6.1.3 of the 2008 SIP revision request explains that, as in the Nez Perce Tribal Federal Implementation Plan, 40 CFR 49.124(c), and the previous Idaho Smoke Management and Crop Residue Disposal Act, the stakeholders also agreed in the negotiated rulemaking that the opacity standard in IDAPA 58.01.01.625 shall not apply to the open burning of crop residue.

2. Section 110(l) Requirements

Under section 110(l) of the Clean Air Act, the Administrator may not approve a SIP revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act].''

To address this requirement, the EPA reviewed and analyzed air monitoring data from Federal Reference Method (FRM) and Federal Equivalent Method (FEM) monitors in Idaho's EPA-approved monitoring network and compared the data to the National Ambient Air Quality Standards

[3] Idaho's negotiated rulemaking process is an informal process open to the public and intended to improve the substances of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rule-making; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. See Section 67–5220, Idaho Code and IDAPA 04.11.01.810 through 819.

[4] The current on hour action criteria under IDAPA 58.01.01.556 is an average of 80 úg/m^3 for $PM_{2.5}$ and an average of 385 úg/m^3 for PM_{10}.

(NAAQS) for all pollutants.[5] Idaho's network, as it was most recently approved by the EPA on November 21, 2007, includes 25 FEM and FRM monitors throughout the state. Idaho also operates about a dozen other monitors that are not FEM or FRM monitors that support IDEQ's air quality forecasting and smoke management programs. More than half of the total monitors are $PM_{2.5}$ monitors.

Open burning of crop residue has been a common practice in many parts of Idaho for decades and continued through 2006, notwithstanding the fact of the Ninth Circuit's 2007 ruling that the EPA-approved SIP prohibited such burning. Consequently, the air quality monitoring data obtained in Idaho prior to 2007 would include the actual air quality impacts associated with crop residue burning that are detectable by Idaho's monitors.[6] Therefore, review and analysis of the monitoring data also reflects analysis of any impacts detected by the monitors resulting from crop residue burning.

Specifically, our review focused on air quality data collected by Idaho's EPA-approved monitoring network and entered into the EPA's Air Quality System (AQS) over the past 10 years (1997 to 2007). This ten year timeframe is consistent with the period the EPA uses for criteria air pollutant summary reports that are extracted routinely from AQS (e.g., AirData reports), and it is also the period specified for certain air quality planning requirements under the Clean Air Act. See section 175A of the Act.

Based on our review of these monitoring data, there is no evidence from the monitors of a violation of the NAAQS as a result of the open burning of crop residue. We considered all of the NAAQS pollutants and reviewed the monitoring data for the entire state. The most relevant pollutants for this discussion are $PM_{2.5}$, PM_{10}, and ozone. $PM_{2.5}$ and ozone are relevant because the EPA's recent review of the NAAQS for these pollutants resulted in more stringent standards (71 FR 61144 (October 17, 2006) and 73 FR 16426 (March 27, 2008)) and monitoring data indicate that these new standards may be exceeded in some areas in Idaho. PM_{10} is relevant because the only existing nonattainment areas in Idaho are for PM_{10}. There are no nonattainment areas for carbon monoxide, sulfur dioxide, nitrogen dioxide or lead. AQS data show the levels of these pollutants are well below the standards.

$PM_{2.5}$

There are two areas in Idaho with design values[7] above the NAAQS for $PM_{2.5}$.[8] These areas are the Pinehurst area and the Franklin County area. In December 2007, both areas were recommended by Idaho as $PM_{2.5}$ nonattainment areas for the 24 hour $PM_{2.5}$ NAAQS.

The Pinehurst area historically experiences wintertime (November through February) stagnation events. Consistently, data show that past exceedances have occurred almost exclusively during the wintertime and not when the open burning of crop residue typically occurs (March and April for the spring crop burning season and mid-July through the end of October for the fall crop burning season). According to Idaho's December 2007 recommendation letter, the main emission sources contributing to $PM_{2.5}$ in the Pinehurst area are residential wood heating, vehicles, open burning of yard debris, and slash burning. Idaho attributed none of the exceedances of $PM_{2.5}$ to the burning of crop residue.

The Franklin County area also experiences wintertime stagnation events, and the data show that past $PM_{2.5}$ exceedances have occurred in the wintertime; not when the open burning of crop residue typically occurs. Idaho's December 2007 recommendation letter identifies the main emission sources contributing to $PM_{2.5}$ in Franklin County as vehicle, residential wood heating, and agriculture (feedlot and dairy ammonia). Like for Pinehurst, Idaho attributed none of the $PM_{2.5}$ exceedances in Franklin County to the burning of crop residue.

PM_{10}

For PM_{10}, we reviewed air quality data for the only two nonattainment areas in Idaho under Idaho jurisdiction.[9] These are Pinehurst and Sandpoint, both of which are designated nonattainment areas for the PM_{10} NAAQS.[10] Both have been meeting the PM_{10} NAAQS for more than 10 years and have PM_{10} design values well below the NAAQS.[11]

Ozone

Although AQS data show that all areas in Idaho are meeting the existing 8 hour NAAQS for ozone, the EPA recently revised and lowered the standard, effective May 27, 2008.[12] At the new level, our initial review of AQS data shows that the design value for one area, the Boise, Idaho area, may be above the new NAAQS based on 2005–2007 data. Further review shows that the highest values have been measured typically in the hottest summer months of July and August. Since crop residue burning has occurred historically in August, we can not rule out the possibility of precursors to ozone[13] from crop residue burning contributing to high ozone days. But as discussed below, the new crop residue disposal rules have safeguards that address the possibility of such contributions, and that would preclude crop residue burning on days when a NAAQS exceedance might occur.

In sum, the past ten years of air quality data show no monitored evidence that the burning of crop residue has led to a violation of the NAAQS. To the extent that the burning of crop residue may contribute to exceedances of the revised NAAQS for ozone and $PM_{2.5}$, the provisions in IDAPA 58.01.01.617 through 623 of Idaho's new crop residue burning program adequately addresses those concerns by preventing crop residue burning on days when a NAAQS exceedance may occur. Specifically, IDAPA 58.01.01.621 prohibits burn approval if ambient air quality levels exceed seventy-five percent of the level of any NAAQS on any day or if those levels are projected to exceed such level over the next twenty-four hours. In

[5] The NAAQS pollutants are carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide.

[6] Following the 9th Circuit's ruling, crop residue burning did not occur in Idaho in 2007 on fields under state jurisdiction.

[7] A design value is a statistic that describes the air quality status of a given area relative to the level of the National Ambient Air Quality Standards (NAAQS).

[8] $PM_{2.5}$ refers to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 micrometers. The annual standard is 15 micrograms per cubic meter, based on the 3-year average of annual mean $PM_{2.5}$ concentrations. The 24-hour standard is 35 micrograms per cubic meter, based on the 3-year average of the 98th percentile of 24-hour concentrations.

[9] One other area, the Fort Hall nonattainment area (located on the Fort Hall Reservation), is also designated nonattainment for PM_{10}. Recent data show that PM_{10} air monitoring values for this area are also well below the NAAQS. Since the shutdown of the FMC facility in the Fort Hall nonattainment area in December 2001, PM_{10} levels have been well below the standard, except for a few days when there were also high winds.

[10] The 24 hour PM_{10} NAAQS is 150 úg/m^3.

[11] Over the past 10 years, Sandpoint has had no exceedances of the PM_{10} NAAQS and Pinehurst has had only one, on February 19, 1998. However, the Pinehurst exceedance did not result in a violation and was not likely the result of the open burning of crop residue because such burning does not typically occur during that time of year.

[12] The 8-hour ozone standard was lowered from 0.08 parts per million to 0.075 parts per million. States must make recommendations to EPA no later than March 2009 for areas to be designated attainment, nonattainment and unclassifiable.

[13] Products of incomplete combustion include volatile organic compounds and nitrogen oxides, both of which are precursors to ozone.

addition, the rules specifically prohibit burn approval if the ambient air quality levels have reached or are forecasted to reach and persist at, eighty percent of the one hour action criteria for particulate matter. Thus, under these provisions, the burning of crop residue would simply not occur if air quality levels exceed the NAAQS or if burning could result in a NAAQS exceedance.

In addition, pursuant to IDAPA 58.01.01.621.01 a. through i., the IDEQ may also consider a number of additional factors, in deciding whether to approve a particular burn request. The factors include consideration of the expected emissions from all burns proposed for the same date; the proximity of other burns as well as potential emission sources within the area to be affected by the proposed burn; the moisture content of the material to be burned, the acreage, crop type, and fuel characteristics, meteorological conditions, proximity to institutions with sensitive populations such as schools, hospitals and residential health care facilities;[14] proximity to public roadways or airports; and other factors relevant to preventing exceedances of the air quality concentrations in the IDAPA 58.01.01.621. Consideration of these factors will help ensure that the crop residue burning will not interfere with the NAAQS or any other applicable requirement of the Act.

Idaho Code 39–108 provides DEQ with investigation, inspection, and enforcement authority over violations of Idaho Code 39–114 (the air quality rules) and a Permit by Rule issued pursuant to the Air Quality Rules. A notice of violation with a penalty of up to $19,000 per day per violation may be assessed. Idaho Code 39–108(30) and (5). Civil and criminal enforcement actions may be taken for violations pursuant to Idaho Code 39–109.

Supporting Materials in the 2008 Draft SIP Revision

In the 2008 draft SIP revision request, the IDEQ submitted additional documentation and analysis showing that past smoke management practices in Idaho did not contribute to NAAQS violations. The draft SIP revision request includes additional technical analysis, including analysis of air quality, meteorology, emissions inventory, and non-regulatory modeling to show that the crop residue burning activity in the State of Idaho is not causing nor significantly contributing to a violation of the NAAQS. The IDEQ also provided its rationale for the provision added at IDAPA 58.01.01.625.05 addressing visible emissions. It explains that, as in the FIP for the Nez Perce Reservation, 40 CFR 49.124(c), and the previous Smoke Management and Crop Residue Disposal Act, the stakeholders also agreed in the negotiated rulemaking that the opacity standard in IDAPA 58.01.01.625 shall not apply to the open burning of crop residue (IDAPA 58.01.01.625.05).

We acknowledge that the Federal Air Rules for Reservations (FARR) exclude open burning from the visible emissions requirements. 70 FR 18074 (April 8, 2005). The FARR established the basic air quality rules for all of the Indian Reservations in Idaho, Oregon and Washington. Thus, these requirements apply not only to the Nez Perce Indian Reservation, but to all Indian Reservations in Idaho, Oregon, and Washington. Therefore, open burning on any of these reservations is not subject to the visible emission standards on any of these reservations.

When promulgating the FARR, the EPA stated that ''EPA is also proposing specific exemptions to the rule in a manner similar to the State and local agency rules in the docket. These exemptions include sources or activities for which compliance with the opacity rule would not be feasible or would impose unreasonable costs (*e.g.*, open burning, agricultural activities, residential space heating, public roads, sweat lodges, non-commercial smoke houses).'' (Technical Support Document for the FARR, Docket ID No. OAR–2004–0067, page 18.) Recognizing we have promulgated an exemption from the visible emissions standard for open burning in the past ''in a manner similar to the State and local agency rules,'' the EPA determines that the State's new provision regarding visible emissions is reasonable.

In sum, based on our review of past air quality monitoring data for Idaho, the supporting material provided by the IDEQ, and the crop burning provisions at IDAPA 58.01.01.617 through 623, we conclude that the open burning revisions related to crop residue burning (IDAPA 58.01.01.617 through 623) and the provision addressing visible emissions at IDAPA 58.01.01.625.05, would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

3. Section 193 Requirements

Section 193 of the Act provides that no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant, may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Therefore, the question is whether the open burning revisions and the provision addressing visible emissions in the 2008 draft SIP revision request insure equivalent or greater emission reductions compared with the open burning requirements for crop residue disposal and the provisions addressing visible emissions in nonattainment areas reflected in the approved Idaho SIP before November 15, 1990.

According to information from IDEQ, the burning of crop residue does not occur within the boundaries of either of Idaho's two nonattainment areas (Pinehurst and Sandpoint). Because section 193 applies only to requirements in effect as of November 15, 1990, in nonattainment areas and no burning of crop residue occurs in any of Idaho's nonattainment areas, we conclude that the requirements in section 193 are met. Within Idaho's nonattainment areas, exempting crop residue burning from the visible emissions standard has no effect on the emissions reductions achieved by the visible emissions requirements. Therefore, the SIP modification insures equivalent emissions reductions in those nonattainment areas.

Moreover, specifically regarding allowing crop residue disposal burning as a lawful form of open burning, based on our review of the SIP in effect before November 15, 1990, and the 2008 draft SIP revision request, we have determined that the 2008 draft SIP revision insures equivalent or greater emission reductions than the pre-November 15, 1990, Idaho SIP. The SIP in effect in Idaho before November 15, 1990, allowed the open burning of crop residue. Specifically, Title 1, Chapter 1 of Idaho's Rules and Regulations for the Control of Air Pollution in Idaho Manual provided ''[t]he open burning of plant life grown on the premises in the course of any agricultural, forestry, or land clearing operation may be permitted when it can be shown that such burning is necessary and that no fire or traffic hazard will occur...'' [15] The

[14] The rule explicitly provides that the Department shall NOT authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is expected to impact such institutions.

[15] This language is found in section 1153.08 and reads in full: ''The open burning of plant life grown on the premises in the course of any agricultural,

Continued

EPA approved these provisions on May 31, 1972, and re-approved them on July 28, 1982. 37 FR 10861 and 47 FR 32530. This SIP applied statewide and allowed open burning of crop residue if minimal conditions were met. Although the SIP provisions included conditions intended to minimize the effects of burning, the conditions were vague. For instance they required that the burning be necessary and that ''no fire or traffic hazard will occur'' (at section 1153.08) and to ''make every reasonable effort to burn only when weather conditions are conducive to a good smoke dissipation.'' (at section 1153.08(a)). These provisions were in effect in Idaho's federally-approved SIP as of November 15, 1990. The rule provisions that the Ninth Circuit determined prohibit the burning of crop residue were not approved into the federally-approved SIP until July 23, 1993. 58 FR 39445.

In contrast, the 2008 draft SIP revision request is more specific and contains numerous and explicit procedures and measures to limit emissions associated with crop residue burning. For example, prior to conducting a burn, a person must obtain a permit by rule as defined in IDAPA 58.01.01.618. Any person applying to burn crop residue must register annually and provide detailed and specific information to the IDEQ regarding a proposed burn. Additionally, prior to conducting the burn, a person must receive a specific approval from the IDEQ to conduct the burn and must confirm the approval on the morning of the burn. As discussed above, the IDEQ's approval of burn requests is tied to specific air quality levels below the NAAQS and burning is completely prohibited on certain days and at certain times. Other conditions require that special consideration be made for sensitive populations and are designed to ensure the public is notified and has ready access to burn call information. In light of these more specific and more stringent provisions, the EPA concludes that the approval of the 2008 draft SIP revision request will insure equivalent or greater emission reductions than did the Idaho SIP in effect on November 15, 1990.

The IDEQ also provides discussion of whether the 2008 draft SIP revision request insures equivalent or greater emission reductions compared to Idaho's pre-November 15, 1990, federally-approved SIP. It points out that the SIP in place before 1990 required no air quality impact analysis and applied not only to crop residue grown in the field generated but to any plant life grown on any agricultural operation. It also points out that prior to 1990, Idaho's SIP authorized the broad practice of agricultural burning. It stated: ''The open burning of plant life grown on the premises in the course of any agricultural, forestry or land clearing operating may be permitted when it can be shown that such burning is necessary and no fire or traffic hazard will occur. Convenience of disposal is not of itself a valid necessity for burning.'' 37 FR 10842, 10861 (May 13, 1972).

The IDEQ also explains that the crop residue burning program provided in the 2008 draft SIP revision request creates a stronger, more protective program than that in place prior to 1990. Moreover, it adds, the only two nonattainment areas in the state, Sandpoint and Pinehurst, in which crop residue disposal burning does not occur, experience high concentrations of particulate matter in winter months, not in the early fall months when crop residue burning mainly occurs in other areas. The IDEQ points to these considerations and the required implementation of other control measures for these areas, and concludes that the SIP revision will not in any way relax any other control requirement in effect in the Pinehurst or Sandpoint nonattainment areas.

III. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within ''Indian Country'' as defined in 18 U.S.C. 1151.[16] Therefore, the EPA proposes that this SIP approval not extend to ''Indian Country'' in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with the EPA's previous approval of Idaho's PSD program, in which the EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with the EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).[17]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

forestry, or land clearing operation may be permitted when it can be shown that such burning is necessary and that no fire or traffic hazard will occur. Convenience of disposal is not of itself a valid necessity for burning. 1. It shall be the responsibility of any person conducting such burning to make every reasonable effort to burn only when weather conditions are conducive to a good smoke dissipation and only when an economical and reasonable alternate method of disposal is not available. 2. When such alternate method is made available, it shall be put into use within a reasonable time. 3. Any person conducting an agricultural, forestry, or land clearing burning operation similar to an operation carried out by a governmental agency shall follow the rules and procedures of the agency with regard to minimizing air pollution. 4. When such burning creates air pollution or a public nuisance, additional restrictions may be imposed to minimize the effect upon the environment.

[16] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

[17] Since the CAA was amended in 1990, EPA has been clear in its approvals of State programs that the approved State program does not extend into Indian country. It is EPA's position that, absent an explicit finding of jurisdiction and approval in Indian country, State and local governments lack authority under the CAA over air pollution sources, and the owners or operators of air pollution sources, throughout Indian country.

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 21, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

40 CFR part 52 is proposed to be 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 N—Idaho

2. In § 52.670, the table in paragraph (c) is amended as follows:

a. By revising entries 600 through 603.

b. By revising entries 606 through 610.

c. By revising entries 612 and 613.

d. By revising entries 615 though 617.

e. By adding in numerical order entries 618 though 623.

f. By revising entry 625.

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED IDAHO REGULATIONS

[Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, Previously Codified at IDAPA Chapter 39 (Appendix A.3)]

State citation	Title/subject	State effective date	EPA approval date	Explanations
58.01.01—Rules for the Control of Air Pollution in Idaho				
* *	*	*	*	* *
600	Rules for Control of Open Burning.	4/02/08	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
601	Fire Permits, Hazardous Materials and Liability.	4/02/08	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
602	Nonpreemption of Other Jurisdictions.	4/02/08	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
603	General Restrictions	4/02/08 3/21/03 5/1/94	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
606	Categories of Allowable Burning.	4/02/08	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
607	Recreational and Warming Fires.	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
608	Weed Control Fires	5/1/94	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
609	Training Fires	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.

EPA—APPROVED IDAHO REGULATIONS—Continued

[Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, Previously Codified at IDAPA Chapter 39 (Appendix A.3)]

State citation	Title/subject	State effective date	EPA approval date	Explanations
610	Industrial Flares	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
* *	*	*	*	* *
612	Landfill Disposal Site Fires	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
613	Orchard Fires	3/21/03 5/1/94	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
* *	*	*	*	* *
615	Dangerous Material Fires	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
616	Infectious Waste Burning	3/21/03	4/29/08 [Insert page number where the document begins].	Previous EPA Approval Date of 7/11/05 removed in response to 9th Circuit remand.
617	Crop Residue	4/02/08	4/29/08 [Insert page number where the document begins].	
618	Permit By Rule	4/02/08	4/29/08 [Insert page number where the document begins].	
619	Registration for Permit By Rule.	4/02/08	4/29/08 [Insert page number where the document begins].	
620	Registration Fee	4/02/08	4/29/08 [Insert page number where the document begins].	
621	Burn Determination	4/02/08	4/29/08 [Insert page number where the document begins].	
622	General Provisions	4/02/08	4/29/08 [Insert page number where the document begins].	
623	Public Notification	4/02/08	4/29/08 [Insert page number where the document begins].	
625	Visible Emissions	4/02/08	4/29/08 [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–9269 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7774]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in

order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 28, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7774, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or.(e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Taylor County, Florida, and Incorporated Areas				
Aucilla River	At U.S. Highway 98	None	+10	Unincorporated Areas of Taylor County.
	At the Taylor/Madison County boundary	None	+45	
Pimple Creek	Approximately 600 feet upstream of the confluence with Spring Creek.	+36	+37	City of Perry.
	Approximately 400 feet downstream of Cherry Street	+42	+41	
Pimple Creek East Branch	Just upstream of Johnson Stripling Road	+43	+44	City of Perry.
	Approximately 2,000 feet upstream of the confluence with Pimple Creek.	+44	+45	
Rocky Creek	At the confluence with Spring Street	None	+25	Unincorporated Areas of Taylor County.
	Approximately 1,300 feet upstream of U.S. Highway 221.	None	+56	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Perry

Maps are available for inspection at Perry City Hall, 224 South Jefferson Street, Perry, FL.

Unincorporated Areas of Taylor County

Maps are available for inspection at Taylor County Building/Planning Department, 201 East Green Street, Perry, FL.

Alexander County, Illinois, and Incorporated Areas

Cotton Slough, interior drainage ponding.	Unincorporated Alexander County (north of Urbandale, IL).	None	+308	Unincorporated Areas of Alexander County.
Interior drainage ponding (Goose Pond Pumping Station).	Unincorporated Alexander County (near Urbandale, IL).	None	+309	Unincorporated Areas of Alexander County.
Mississippi River	One mile upstream of the confluence with the Ohio River.	+332	+331	City of Cairo, Unincorporated Areas of Alexander County, Village of East Cape Girardeau, Village of McClure, Village of Tamms, Village of Thebes.
	Six miles upstream of State Route 146 (River Mile 58).	+361	+356	
Pigeon Creek	At the mouth of Horseshoe Lake	+340	+336	Unincorporated Areas of Alexander County.
	At State Route 3	+343	+342	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Cairo

Maps are available for inspection at Cairo City Hall, 1501 Washington Avenue, Cairo, IL 62914.

Unincorporated Areas of Alexander County

Maps are available for inspection at Alexander County, County Clerk's Office, 2000 Washington Avenue, Cairo, IL 62914.

Village of East Cape Girardeau

Maps are available for inspection at East Cape Girardeau Village Hall, 50 Brookwood, McClure, IL 62957.

Village of McClure

Maps are available for inspection at McClure Village Hall, 38204 Grapevine Trail, McClure, IL 62957.

Village of Tamms

Maps are available for inspection at Tamms Village Hall, 425 Front Street, Tamms, IL 62988.

Village of Thebes

Maps are available for inspection at Thebes Village Hall, 413 North 6th Street, Thebes, IL 62990.

Genesee County, Michigan, and Incorporated Areas

Armstrong Creek	Downstream side of Francis Road	+683	+682	Township of Flushing.
	Approximately 2,100 feet upstream of Stanley Road	+705	+708	Township of Montrose.
Copneconic Lake	Entire shoreline of Copneconic Lake	None	+846	Township of Fenton.
Fenwin Pond	Entire shoreline of Fenwin Pond	None	+837	Township of Mundy.
Lum Drain	Downstream side of Moorish Road	None	+778	Township of Gaines.
	Upstream side of Elms Road	None	+783	
Pierson Branch of Thread Creek.	Approximately 680 feet downstream of S Center Road.	None	+766	City of Burton.
	Approximately 1,500 feet downstream of E Maple Avenue.	None	+822	
Shinanguag Lake	Entire shoreline of Shinanguag Lake	None	+890	Township of Atlas.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Burton

Maps are available for inspection at 4303 South Center Road, Burton, MI 48519.

Township of Atlas

Maps are available for inspection at 7386 Gale Road, Goodrich, MI 48439.

Township of Fenton

Maps are available for inspection at 12060 Mantawauka Drive, Fenton, MI 48430.

Township of Flushing

Maps are available for inspection at 6524 North Seymour Road, Flushing, MI 48433.

Township of Gaines

Maps are available for inspection at 9255 Grand Blanc Road, Gaines, MI 48436.

Township of Montrose

Maps are available for inspection at 139 South Saginaw Street, Montrose, MI 48457.

Township of Mundy

Maps are available for inspection at 3478 Mundy Avenue, Swartz Creek, MI 48473.

Washtenaw County, Michigan, and Incorporated Areas

Allen Creek	Just downstream of Conrail Railroad	+768	+769	City of Ann Arbor.
	Approximately 500 feet upstream of E Madison Street	+819	+820	
Allen Creek Diversion	Just upstream of Miller Road	None	+795	City of Ann Arbor.
	Just downstream of Ann Arbor Railroad	None	+801	
Letts Creek	Confluence with North Fork Mill Creek	None	+890	Township of Lima.
	Just upstream of Pierce Road	None	+928	
Mill Creek	Mouth at Huron River	None	+838	Township of Scio.
	Just upstream of North Parker Road	None	+863	Township of Lima, Township of Webster, Village of Dexter.
Millers Creek	Just upstream of Geddes Road	None	+752	City of Ann Arbor.
	Approximately 2,000 feet upstream of Baxter Road	None	+883	Township of Ann Arbor.
Millers Creek Diversion	Just upstream of confluence with Millers Creek	None	+753	City of Ann Arbor.
	Just downstream of diversion from Millers Creek	None	+771	
North Fork Mill Creek	Approximately 800 feet downstream of Fletcher Road	None	+885	Village of Chelsea, Township of Lima.
	Approximately 300 feet upstream of Conway Road	None	+934	Township of Sylvan.
North Fork Mill Creek	Entire North Fork Mill Creek within this community. Approximately 800 feet downstream of Fletcher Road.	None	+885	Township of Lima.
	Just downstream of McKinley Road	None	+891	
Paint Creek	Washtenaw County Boundary	None	+652	Township of Augusta.
	Just downstream of East Bemis Road	None	+692	
Swift Drain	Mouth at Huron River	None	+754	City of Ann Arbor.
	Just upstream of East Morgan Road	None	+831	Charter Township of Pittsfield, Township of Ann Arbor, Village of Chelsea.
Traver Creek	Mouth at Huron River	+762	+763	City of Ann Arbor.
	Approximately 2,000 feet upstream of Warren Road (just upstream of SB U.S. 23).	None	+935	Township of Ann Arbor.
Traver Creek Diversion	At confluence with Traver Creek	None	+901	City of Ann Arbor.
	At diversion from Traver Creek	None	+907	
Tributary To Paint Creek	Approximately 2,400 feet downstream of Munger Road.	None	+773	Charter Township of Pittsfield, Township of Ypsilanti.
	Just downstream of Merritt Road	None	+821	
West Branch Paint Creek	Just upstream of confluence with Paint Creek	None	+675	Township of Augusta.
	Just downstream of East Bemis Road	None	+698	
West Park Miller Drain	Just upstream of confluence with Allen Creek	+799	+801	City of Ann Arbor.
	Just downstream of Wesley Avenue	+850	+845	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
West Park Miller Drain South Branch.	Confluence with West Park Miller Drain	+801	+806	City of Ann Arbor.
	Approximately 60 feet downstream of North Revena Boulevard.	+849	+851	

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+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Charter Township of Pittsfield

Maps are available for inspection at 6201 West Michigan Avenue, Ann Arbor, MI 48108.

City of Ann Arbor

Maps are available for inspection at 100 North Fifth Avenue, Ann Arbor, MI 48104.

Township of Ann Arbor

Maps are available for inspection at 3792 Pontiac Trail, Ann Arbor, MI 48105.

Township of Augusta

Maps are available for inspection at 605 South Main, Whittaker, MI 48190.

Township of Lima

Maps are available for inspection at 11452 Jackson Road, Chelsea, MI 48118.

Township of Scio

Maps are available for inspection at 2355 West Stadium Boulevard, Ann Arbor, MI 48107.

Township of Sylvan

Maps are available for inspection at 18027 Old U.S. Highway 12, Chelsea, MI 48118.

Township of Webster

Maps are available for inspection at 5665 Webster Church Road, Dexter, MI 48130.

Township of Ypsilanti

Maps are available for inspection at 7200 South Huron River Drive, Ypsilanti, MI 48197.

Village of Chelsea

Maps are available for inspection at 104 East Middle Street, Chelsea, MI 48118.

Village of Dexter

Maps are available for inspection at 6880 Dexter-Pinckney Road, Dexter, MI 48130.

Goliad County, Texas, and Incorporated Areas

Maddox Branch	Approximately 65 feet upstream of Fulcord Street	None	+142	City of Goliad.
	Approximately 1,550 feet upstream of U.S. Highway 183.	+200	+199	
San Antonio River	Approximately 600 feet upstream of confluence with Maddox Branch.	None	+142	City of Goliad.
	Approximately 1,300 feet upstream of South San Patricio Street.	None	+147	
Southwest City Drain	Approximately 950 feet downstream of Fannin Street	+141	+147	City of Goliad.
	Approximately 150 feet upstream of West Oak Street	+194	+199	
Sparrow Branch	Approximately 475 feet downstream of Hord Street	None	+146	City of Goliad.
	Approximately 825 feet upstream of Sunset Avenue ..	+196	+199	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Goliad

Maps are available for inspection at 152 West End Street, Goliad, TX 77963.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Karnes County, Texas, and Incorporated Areas				
Escondido Creek	Approximately 700 feet downstream of confluence with Nichols Creek.	+259	+258	City of Kenedy.
	Approximately 450 feet upstream of confluence with Panther Creek.	None	+274	
Marcelinas Creek.	Approximately 730 feet upstream of confluence with Tributary 1 to Marcelinas Creek Watershed.	None	+300	City of Falls City.
	Approximately 830 feet upstream of confluence with Tributary 8 to Marcelinas Creek Watershed.	None	+307	
Nichols Creek	Approximately 265 ft downstream of S. 2nd Street	+268	+269	City of Kenedy.
Ojo de Agua Creek	Approximately 1,050 feet downstream of farm to Market 81.	None	+262	Town of Runge.
	Approximately 860 feet upstream of confluence with Tributary 9 to Ojo de Agua Watershed.	None	+287	
San Antonio River	Approximately 460 feet downstream of confluence with Marcelinas Creek.	None	+300	City of Falls City.
	Approximately 1,440 feet downstream of confluence with Tributary 199 to Lower San Antonio River Watershed.	None	+304	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Falls City

Maps are available for inspection at 208 North Irvin Street, Falls City, TX 78113.

City of Kenedy

Maps are available for inspection at 303 West Main Street, Kenedy, TX 78119.

Town of Runge

Maps are available for inspection at 109 North Helena, Runge, TX 78151.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Teton County, Wyoming, and Incorporated Areas				
Flat Creek	Approximately 5,100 feet South of the intersection of Wilson Canyon Drive and Highway 89.	*5,976	*5,974	Unincorporated Areas of Teton County.
	Approximately 1,350 feet downstream of High School Road.	*6,105	*6,107	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Teton County

Maps are available for inspection at County Administration Building, 200 South Willow Street, Jackson, WY 83001.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 18, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–9260 Filed 4–28–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0050; 1111 FY07 MO–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Western Sage-Grouse (Centrocercus urophasianus phaios) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the western sage-grouse (*Centrocercus urophasianus phaios*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the western sage-grouse may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species. We will initiate a determination on critical habitat for this species if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information be submitted on or before June 27, 2008.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R1–ES–2008–0050; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Project Manager, Oregon Fish and Wildlife Office, by mail (see **ADDRESSES**), telephone (503–231–6179), or facsimile (503–231–6195). Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the western sage-grouse. We request any additional information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the western sage-grouse, including:

(1) Information regarding the taxonomic validity of western sage-grouse as a subspecies of the greater sage-grouse (e.g., based on morphological, behavioral, geographic, genetic, or other diagnostic factors), either as petitioned or along another geographic boundary;

(2) Information regarding the significance, if any, of recent genetic studies on the taxonomic classification of the western sage-grouse, such as the conclusion of Benedict *et al.* (2003, p. 309) that studies of mitochondrial DNA do not support the subspecies delineation, or the potential significance, if any, of the distribution of the unique haplotypes or populations clusters identified by Oyler-McCance *et al.,* 2005;

(3) Information as to the identity and text of the document that the petitioner references in support of behavioral differences in sage-grouse and cites on page 7 of the petition as ''US Fish and Wildlife Service 1998, p. 1 of attachment entitled ''Sage Grouse''—(Candidate Conservation?).'' We have been unable to determine what document the petitioner is referring to, and the petitioner has not responded to our requests to clarify the reference;

(4) Information regarding the historical and current population status, distribution, and trends of western sage-grouse; its biology and ecology; and habitat selection;

(5) Information on the effects of potential threat factors relevant to western sage-grouse that are the basis for a listing determination under Section 4(a) of the Act, which are: (a) The present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; and (e) other natural or manmade factors affecting its continued existence; and

(6) Information on management programs for the conservation of the western sage-grouse.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

For more information on the biology, habitat, and range of the western sage-grouse, please refer to the ''Species Information'' section in our previous 90-day finding published in the **Federal Register** on February 7, 2003 (68 FR 6500).

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a status review of the species.

We received a petition, dated January 24, 2002, from the Institute for Wildlife Protection, requesting that the western sage-grouse (*Centrocercus urophasianus phaios*), occurring from northern California through Oregon and Washington, as well as any western sage-grouse that still occur in parts of Idaho, be listed under the Act. The petitioner excluded the Mono Basin area population in California and northwest Nevada since they already had petitioned this population as a distinct population segment (DPS) for emergency listing. The petitioner also requested that the Service include the Washington DPS in this petition, even though this DPS was already recognized by the Service as a candidate for listing under the Act, based on a 12-month petition finding in which we found that listing the DPS was warranted but precluded by other higher priority listing actions (66 FR 22984, May 7, 2001).

The January 24, 2002, petition clearly identified itself as such and included the requisite identification information as required in 50 CFR 424.14(a). Accompanying the petition was information related to the taxonomy, life history, demographics, movements, habitats, threats, and the past and present distribution of western sage-grouse.

We began processing the petition October 30, 2002, and our finding was published on February 7, 2003 (68 FR 6500). We found that the petition did not present substantial information indicating that the petitioned action may be warranted, because there was insufficient evidence that the western sage-grouse is a valid subspecies or DPS, and therefore does not constitute a listable entity under the Act. On the same day our finding was published, we received a 60-day Notice of Intent (NOI) to sue from the petition, alleging that our negative 90-day finding violated the Act.

The petitioner filed a court complaint on June 6, 2003, challenging the merits of the 90-day finding. On August 10, 2004, the U.S. District Court for the Western District of Washington ruled in favor of the Service (*Institute for Wildlife Protection* v. *Norton,* No. C03–1251P), and the petitioner filed an appeal on November 24, 2004. The United States Court of Appeals for the Ninth Circuit issued a memorandum opinion and order on March 3, 2006, remanding the matter for a new 90-day finding. (*Institute for Wildlife Protection* v. *Norton,* 174 Fed. Appx. 363.) The Court rejected the Service's conclusion that the petition did not present substantial information indicating that the western sage-grouse may be a valid subspecies, but upheld the Service's determination that the petition did not present substantial information indicating that the population may constitute a DPS.

Finding

In accordance with the remand, we have reconsidered the information presented in the petition. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to the determination of whether the information meets the ''substantial scientific and commercial information'' threshold, which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14). Information we currently have raises significant questions about whether the western sage-grouse is a valid subspecies and thus a listable entity under the Act. Nevertheless, and particularly in light of some uncertainty regarding the potential significance of most recent genetic evidence regarding the validity of a western subspecies, we find that the petition presents substantial scientific or commercial information, sufficient to meet the minimal ''reasonable person'' standard in our regulations for a 90-day finding as described above, indicating that listing the western sage-grouse as threatened or endangered may be warranted. Therefore, we are initiating a status review of the western sage-grouse to determine if listing it is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the western sage-grouse.

It is important to note that the ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding will also be positive.

The Service is already in the process of conducting a status review of the greater sage-grouse across the entire range of the species (73 FR 10218, February 26, 2008), and elsewhere in today's **Federal Register** we are publishing a notice that extends our request for information on that status review to June 27, 2008. In today's **Federal Register** we also are publishing a separate notice of a 90-day finding and initiation of a status review for the Mono Basin population of the greater sage-grouse. Consequently, at this time the Service has formally initiated three status reviews involving the greater sage-grouse, and the respective notices in today's **Federal Register** each request that information be submitted by June 27, 2008, for each status review. Information submitted for any one of these status reviews that is relevant to the others need not be submitted more than once. Because the status review of the greater sage-grouse that we initiated on February 26, 2008 (73 FR 10218) covers the entire range of the species, it encompasses the Mono Basin population of the greater sage-grouse and the western subspecies of the greater sage-grouse. It is our intention to

address the taxonomy and status of the western sage-grouse, including relevant information received in response to this notice, within the rangewide status review of the greater sage-grouse. Further, because the three status reviews are somewhat interrelated, we anticipate that any interrelated aspects will be taken into account in our ultimate decisions.

If we determine that listing the western sage-grouse is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we prepare a proposed listing rule.

References Cited

A complete list of all references cited herein is available, upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 18, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–9180 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0022; 1111 FY07 MO–B2]

Endangered and Threatened Wildlife and Plants; Initiation of Status Review for the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; initiation of status review and solicitation of new information; extension of period for submitting information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the period for submitting information that is pertinent to our status review of the greater sage-grouse (*Centrocercus urophasianus*). The extension will provide the public and Federal, State, and local agencies with an additional opportunity to submit information for the status review. Information previously submitted need not be resubmitted; it already has been incorporated into the public record and will be fully considered in the status review.

DATES: To allow us adequate time to conduct this review, we request that information be submitted on or before June 27, 2008.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R6–ES–2008–0022; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service's Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307–772–2374. People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

To ensure that the status review is complete and based on the best scientific and commercial information available, we are soliciting information concerning the status of the greater sage-grouse. Information submitted prior to January 12, 2005, will be considered and need not be resubmitted. New information submitted since the initiation of the current status review on February 26, 2008 (73 FR 10218) need not be resubmitted. We request information from the public, governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the greater sage-grouse throughout its range, including:

(1) Information regarding the species' historical and current population status, distribution, and trends; its biology and ecology; and habitat selection.

(2) Information on the effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence.

(3) Information on management programs for the conservation of the greater sage-grouse.

Please note that submissions merely stating support of or opposition to any potential decisions based on the status review without providing relevant information, although noted, will not be considered, because section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' We intend to use the status review as the basis for determining whether listing the species is warranted, not warranted, or warranted but precluded.

You may submit information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307–772–2374.

Background

On February 26, 2008, we announced the initiation of a status review for the greater sage-grouse (*Centrocercus urophasianus*), and requested that

information regarding the status of the greater sage-grouse be submitted by May 27, 2008 (73 FR 10218). We are extending that period by 30 days, until June 27, 2008, to allow the public ample opportunity to provide information relevant to this status review.

Information previously submitted will be considered and need not be resubmitted. We will base our status review on the best scientific and commercial information available, including all such information received as a result of this notice. For more information on the biology, habitat, and range of the greater sage-grouse, please refer to our previous 12-month finding published in the **Federal Register** on January 12, 2005 (70 FR 2244).

Elsewhere in today's **Federal Register**, we have published separate notices of 90-day petition findings and the initiation of status reviews for the Mono Basin population and the western subspecies of the greater sage-grouse (*C. u. phaios*). Consequently, at this time the Service has formally initiated three status reviews involving the greater sage-grouse, and the respective notices in today's **Federal Register** each request that information be submitted by June 27, 2008. Information submitted for any one of these status reviews that is relevant to the others need not be submitted more than once. Because the status review of the greater sage-grouse that we initiated on February 26, 2008 (73 FR 10218) covers the entire range of the species, it encompasses the Mono Basin population and the western subspecies of the greater sage-grouse. It is our intention to address the taxonomy and status of the Mono Basin area population and the western subspecies within the rangewide status review of the greater sage-grouse. Further, because the three status reviews are somewhat interrelated, we anticipate that any interrelated aspects will be taken into account in our ultimate decisions.

Author

The primary author of this notice is the staff of the Wyoming Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 18, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–9181 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0043; 1111 FY07 MO–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To List the Mono Basin Area Population of the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list the Mono Basin area population of the greater sage-grouse (*Centrocercus urophasianus*) in the Bi-State area of California and Nevada as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petitions present substantial scientific or commercial information indicating that listing this population may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the Mono Basin area population of greater sage-grouse is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this population of the species. We will initiate a determination on critical habitat for this species if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information be submitted on or before June 27, 2008.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R8–ES–2008–0043; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, by mail (see **ADDRESSES**), by telephone (775–861–6300), or by facsimile (775–861–6301). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Mono Basin area population of the greater sage-grouse. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the Mono Basin area population of the greater sage-grouse, including:

(1) Information for the Mono Basin area population of greater sage-grouse regarding historical and current population status, distribution, and trends; biology and ecology; and habitat selection;

(2) Information on the effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence; or

(3) Information on management programs for the conservation of the Mono Basin area population of greater sage-grouse.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific

and commercial data available.'' Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502–7147; telephone 775–861–6300.

Background

For more information on the biology, habitat, and range of the Mono Basin area population of greater sage-grouse, please refer to the ''Species Information'' section in our previous 90-day finding published in the **Federal Register** on December 19, 2006 (71 FR 76058).

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On January 2, 2002, we received a petition dated December 28, 2001, from the Institute for Wildlife Protection requesting that the sage-grouse population occurring in the Mono Basin area of Mono County, California, and Lyon County, Nevada, be listed as an endangered distinct population segment (DPS) under the Act. The petitioner referred to the sage-grouse population in the Mono Basin area as being part of the subspecies *C. u. phaios,* which also is known as the western sage-grouse. In other 90-day findings, we have concluded that the subspecies designations for greater sage-grouse are inappropriate given current taxonomic standards (68 FR 6500, February 7, 2003; 69 FR 933, January 7, 2004). However, in response to judicial direction on one of those 90-day findings, the Service is in the process of reconsidering the taxonomic validity of *C. u. phaios* to determine whether it is a listable entity under the Act. We have not included subspecies designations any further in this finding.

The 2001 petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a March 20, 2002, letter to the petitioners, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. On December 26, 2002, we published a 90-day finding in which we determined that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted (67 FR 78811). Our 2002 finding was based on the lack of substantial information in the petition indicating that the Mono Basin area population of greater sage-grouse is a DPS under our DPS policy (61 FR 4722; February 7, 1996), and thus we concluded it was not a listable entity (67 FR 78811). Our 2002 finding also included a determination that the petition did not present substantial information that the Mono Basin area population of greater sage-grouse was threatened with extinction (67 FR 78811).

On November 15, 2005, we received a formal petition dated November 10, 2005, submitted by the Stanford Law School Environmental Law Clinic on behalf of the Sagebrush Sea Campaign, Western Watersheds Project, Center for Biological Diversity, and Christians Caring for Creation, to list the Mono Basin area population as a threatened or endangered DPS of the greater sage-grouse under the Act. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a March 28, 2006, letter to the petitioners, we responded that we reviewed the petition and determined that emergency listing was not warranted. We also stated that due to court orders and settlement agreements for other listing and critical habitat actions that required nearly all of our listing and critical habitat funding for fiscal year 2006, we would not be able to further address the petition at that time. On April 17, 2006, we received a 60-day notice of intent letter from the Stanford Law School Environmental Law Clinic, dated April 14, 2006, notifying us that the petitioners intended to sue the Service for violating the Act's requirement to make a petition finding within 12 months after receiving a petition.

On November 18, 2005, the Institute for Wildlife Protection and Dr. Steven G. Herman filed a Complaint for Declaratory and Injunctive Relief in United States District Court for the Western District of Washington (*Institute for Wildlife Protection v. Norton*, No. C05–1939 RSM) challenging the Service's 2002 finding that their petition did not present substantial information indicating that the petitioned action may be warranted. On April 11, 2006, we reached a stipulated settlement agreement with the plaintiffs under which we agreed to both evaluate the November 2005 petition and to reconsider the December 2001 petition. The settlement agreement required the Service to submit to the **Federal Register** a 90-day finding by December 8, 2006, and if substantial, to complete the 12-month finding by December 10, 2007. On December 19, 2006, we published a 90-day finding that these petitions did not present substantial scientific or commercial information indicating that the petitioned actions may be warranted (71 FR 76058). In completing the 2006 finding, we also reviewed the December 2001 petition in the context of whether it provided additional information not discussed in the November 2005 petition.

On June 4, 2007, we received a 60-day notice of intent letter from the Stanford Law School Environmental Law Clinic dated June 1, 2007, notifying us that the petitioners identified in the November 2005 petition intended to sue the Service in connection with the Service's 2006 not-substantial 90-day finding

(2006 finding) to list the Mono Basin area population of greater sage-grouse as a DPS under the Act. On August 23, 2007, the November 2005 petitioners filed a Complaint challenging the Service's 2006 finding. Upon review of the Complaint, the Service determined that it would revisit its 2006 finding. The Service entered into a settlement agreement with the petitioners on February 25, 2008. Under the terms of the settlement agreement, the Service agreed to undertake a voluntary remand of the 2006 petition finding, and to submit for publication in the **Federal Register** a new 90-day finding by April 25, 2008. The agreement further stipulates that if the new 90-day finding is positive, the Service will undertake a status review of the Mono Basin population of the greater sage-grouse and submit for publication in the **Federal Register** a 12-month finding by April 24, 2009. This notice constitutes our new 90-day finding.

Finding

Based on our reconsideration of the information provided in the petitions, and in accordance with recent applicable court decisions pertaining to 90-day findings, we find that they present substantial scientific information indicating that listing the Mono Basin area population of greater sage-grouse may be warranted. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). Therefore, we are initiating a status review to determine if listing the population is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the Mono Basin area population of greater sage-grouse.

It is important to note that the ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

The Service is already in the process of conducting a status review of the greater sage-grouse across the entire range of the species (February 26, 2008; 73 FR 10218), and elsewhere in today's **Federal Register** we are publishing a notice that extends our request for information on that status review to June 27, 2008. In today's **Federal Register** we are also publishing a separate notice of a 90-day finding and initiation of a status review for the western sage-grouse (*C. u. phaios*). Consequently, at this time the Service has formally initiated three status reviews involving the greater sage-grouse, and the respective notices in today's **Federal Register** each request that information be submitted by June 27, 2008, for each status review. Information submitted for any one of these status reviews that is relevant to the others need not be submitted more than once. Because the status review of the greater sage-grouse that we initiated on February 26, 2008 (73 FR 10218) covers the entire range of the species, it encompasses the Mono Basin population and the western subspecies of the greater sage-grouse. It is our intention to address the taxonomy and status of the Mono Basin area population, including information received in response to this notice, within the rangewide status review of the greater sage-grouse. Further, because the three status reviews are somewhat interrelated, we anticipate that any interrelated aspects will be taken into account in our ultimate decisions.

If we determine that listing the Mono Basin area population of greater sage-grouse is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we prepare a proposed listing rule.

Author

The primary author of this notice is the staff of the Nevada Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 18, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–9185 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080123074–8572–01]

RIN 0648–AW31

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Scallop Dredge Exemption Areas; Addition of Monkfish Incidental Catch Trip Limits

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to create three Scallop Exemptions that are identical to the current scallop exemptions, except for the addition of an incidental monkfish catch limit. These new scallop exemptions would be restricted to vessels issued either a General Category Atlantic sea scallop permit or a limited access Atlantic sea scallop permit (when not fishing under a scallop days-at-sea (DAS) limitation), when fishing for scallops with small dredge gear (combined width not to exceed 10.5 ft (3.2 m)). Vessels that land an incidental catch of monkfish within these new scallop exemptions would be required to possess a valid monkfish Incidental Catch permit. The intent of this action is to allow small scallop dredge vessels to land monkfish that they are currently discarding consistent with the bycatch reduction objectives of the FMP and National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received no later than 5 p.m., eastern daylight time, on May 14, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AW31, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: (978) 281–9135, Attn: Timothy Cardiasmenos
- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Please write on the envelope: Comments on the Addition of

a Monkfish Incidental Catch Limit within the Existing Scallop Exemptions (RIN 0648–AW31).

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov*, without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Timothy Cardiasmenos, Fishery Management Specialist, (978) 281–9204, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Current regulations, implemented under Framework Adjustment 9, and expanded under Amendment 7 to the FMP, contain a NE multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England (SNE) Exemption Areas. This measure prohibits vessels from fishing in these areas unless they are fishing under a NE multispecies or a scallop DAS allocation, are fishing with exempted gear, are fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or are fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in § 648.80. A fishery may be exempted by the Administrator, Northeast Region, NMFS (RA), after consultation with the New England Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, on average, less than 5 percent per trip, by weight on board, and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

At present, there are three scallop exemptions for scallop dredge vessels when fishing under the scallop General Category permit, or under the limited access scallop permit when not fishing under a scallop DAS. They are referred to as: The GOM Scallop Dredge Exemption Area, established in Framework 21 (February 1997); the SNE Scallop Dredge Exemption Area, established in Amendment 13 (April 2004); and the Great South Channel (GSC) Scallop Dredge Exemption Area, established by the authority of the RA (August 2006). On November 2, 2007, a request was submitted on behalf of the General Category scallop fleet to establish an incidental monkfish catch limit, of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip, consistent with the Monkfish FMP, within the three scallop exemptions. This rule proposes three new exemptions, identical to the existing scallop exemption areas, described at § 648.80(a)(11)(i)(A), (a)(18)(ii)(A), and (b)(11)(ii)(A), with the addition of a 50–lb (23–kg) tail weight or 166–lb (75–kg) whole weight incidental monkfish catch limit per trip, provided the fishery does not jeopardize the fishing mortality objectives of the FMP.

The data analyzed for this action consists of observer data from both General Category and limited access scallop dredge trips within the GOM, GSC, and SNE scallop exemption areas from 2001 to 2007. A total of 85 General Category trips and 198 limited access trips were observed during that period. Bycatch rates were calculated on a trip-by-trip basis by adding up the total weight of NE multispecies, scallops (in-shell weight), and all other catch on each observed trip, and then calculating the percentage of the total catch represented by regulated NE multispecies. The percent bycatch of regulated NE multispecies in the exemption areas ranged from 0 to 10.33 percent in General Category trips (N=85), and 0 to 8.6 percent in limited access trips (N=198). The mean percent bycatch of regulated NE multispecies by weight of the total catch across all areas in the General Category and limited access fisheries was less than 1 percent. From a total of 85 observed General Category trips into the exemption areas, the mean percent bycatch was 0.97 percent of the total catch. From the 198 observed limited access scallop dredge trips into those same areas, the mean percent bycatch was estimated to be 0.93 percent of the total catch.

Monkfish discards were analyzed within this same dataset. Monkfish discards within the current exemption areas ranged from 0 to 611 lb (0–277 kg) tail weight per trip in the General Category fishery (N=85). From a total of 85 General Category trips into the current exemption areas, the mean monkfish discard was 48.1 lb (22 kg) tail weight per trip, and the mean trip was 0.44 days (11 hr). The proposed level of monkfish incidental bycatch within the scallop exemption areas is 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip. This level of monkfish fishing mortality from scallop dredge vessels is within the allowable limit specified under Framework 4 of the Monkfish FMP (October 22, 2007, i.e., 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip).

GSC Scallop Dredge Exemption Area

From a total of 38 observed General Category trips into the current GSC Scallop Exemption, the mean monkfisk catch per trip was 28.98 lb (13 kg) tail weight, and only 1 trip discarded more than 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–302.71 lb (0–137 kg) tail weight per trip.

GOM Scallop Dredge Exemption Area

From a total of 29 observed General Category trips into the GOM Scallop Exemption, the mean monkfish catch per trip was 40.6 lb (18 kg) tail weight, and only 3 trips discarded in excess of 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–425 lb (0–193 kg) tail weight per trip.

SNE Scallop Dredge Exemption Area

From a total of 18 observed General Category trips into the SNE Scallop Exemption, the mean monkfish catch per trip was 100.5 lb (46 kg) tail weight, and only 3 trips discarded more than 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–611 lb (277 kg) tail weight per trip.

The observed level of monkfish discard within the current scallop exemptions, as detailed above, is consistent with the proposed monkfish incidental catch limits. This level of monkfish fishing mortality in the General Category scallop dredge fleet was previously analyzed within Framework 4 to the Monkfish FMP (October 22, 2007). Since the data indicate that the proposed monkfish incidental catch limit is currently being discarded, no change in fishing behavior is expected, and it is not anticipated that there will be an increase in regulated species bycatch. The proposed scallop exemptions, identical to the existing scallop exemptions with the addition of an incidental catch of monkfish, are therefore expected to meet both the bycatch and the fishing mortality requirements of the regulations.

Proposed Measures

GOM, SNE, and the GSC Scallop Dredge Exemption Areas

Based on the analysis of available data, the bycatch of regulated species by scallop dredge vessels is less than, on average, 5 percent per trip, by weight on board, within the exemption areas and the monkfish bycatch is consistent with

the incidental catch level analyzed within the Monkfish FMP. The data analysis shows that, on average, scallop dredge vessels are currently discarding 48.1 lb (22 kg) tail weight of monkfish per trip within the three exemption areas, a level consistent with the proposed level of monkfish incidental catch (50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip). In addition, there are no data to suggest that modifying the present exemptions to accommodate a monkfish incidental catch at 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip would cause a shift in effort towards monkfish or NE multispecies. Therefore, the RA has determined that a monkfish incidental catch of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip, within the GOM, SNE, and GSC Scallop Exemptions, meets the exemption requirements specified in § 648.80(a)(8), and would not be inconsistent with the monkfish fishing mortality goals of the Monkfish FMP.

Therefore, this rule proposes to create three scallop exemptions (GOM, SNE, and GSC), identical to the existing scallop exemptions, with the addition of a 50–lb (23–kg) tail weight or 166–lb (75–kg) whole weight per trip monkfish incidental catch possession limit. These new scallop exemptions would be restricted to vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit (when not fishing under a scallop DAS limitation), when fishing with small dredges (combined width not to exceed 10.5 ft (3.2 m)). Vessels that land an incidental catch of monkfish within these new scallop exemptions would be required to possess, and have onboard, a monkfish Incidental Catch permit.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An Initial Regulatory Flexibility Analysis was not prepared, pursuant to 5 U.S.C. 603, as it has been determined that this rulemaking would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble to this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule. This action proposes to create three scallop exemptions for General Category scallop vessels, or limited access scallop vessels not fishing on a DAS allocation, identical to the current scallop exemptions, with the addition of an incidental catch of monkfish. This action was categorically excluded under the National Environmental Policy Act, as an action that includes minor technical additions, corrections, or changes to an FMP.

The economic impacts of the proposed action are expected to be minimal and positive. This action would allow the General Category scallop fleet, while fishing under a scallop exemption, to land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip, in addition to scallops. This would allow the fleet to utilize these resources in a manner consistent with the bycatch and mortality objectives of the FMP. The proposed incidental catch of monkfish is small, and as such is expected to minimally increase revenues for scallop dredge vessels fishing under the General Category permit provisions.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 23, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.80, paragraphs (a)(8)(iv) introductory text, (a)(11)(i)(A), (a)(18)(ii)(A), and (b)(11)(ii)(A) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(8) * * *

(iv) Unless otherwise specified within the exempted fisheries authorized under this paragraph (a)(8), incidental catch is restricted, at a minimum, to the following:

* * * * *

(11) * * *

(i) * * *

(A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

* * * * *

(18) * * *

(ii) * * *

(A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

* * * * *

(b) * * *

(11) * * *

(ii) * * *

(A) A vessel fishing in the SNE Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

* * * * *

[FR Doc. E8–9353 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 83
Tuesday, April 29, 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

Submission for OMB Review; Comment Request

April 23, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Farmers' Market Nutrition Program (FMNP) Forms and Regulations.

OMB Control Number: 0584–0447.

Summary of Collection: The Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP) is authorized by Public Law 108–265, enacted on June 30, 2004, which amends Section 17(m) of the Child Nutrition Act (42 U.S.C. 1786 (m)). The purpose of the FMNP is to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets, and roadside stands at the option of the State; to expand the awareness and use of farmers' markets; and, to increase sales at such markets. The Food and Nutrition Service (FNS) will collect information from each state that receives a grant under the FMNP program in conjunction with the preparation of annual financial and recipient reports.

Need and Use of the Information: FNS will collect information from the state agency administering the FMNP to develop an annual financial report on the number and type of recipients served by both Federal and non-Federal benefits under the program. The information is necessary for reporting to Congress and for program planning purposes.

Description of Respondents: State, Local, or Tribal Government; individuals or household; business or other for-profit.

Number of Respondents: 6,476.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 20,221.

Food and Nutrition Service

Title: Food Stamp Program Repayment Demand and Program Disqualification.

OMB Control Number: 0584–0492.

Summary of Collection: Section 13(b) of the Food Stamp Act of 1977 requires that State agencies pursue collection action against households that have been overissued benefits. To initiate collection action, State agencies must provide an affected household with written notification informing the overissued household of the claim and demanding repayment.

Need and Use of the Information: State agency personnel will collect the information from individuals collecting food stamp benefits. The State agencies must maintain all records associated with this collection for a period of three years so that FNS can review documentation during compliance reviews and other audits. Without the information, FNS would not be able to correct accidental or fraudulent overpayment errors in the Food Stamp Program.

Description of Respondents: State, Local, and Tribal Government; individuals or households.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 135,393.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–9281 Filed 4–28–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New System of Records; request for comment.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Agriculture (USDA) is proposing to add a new Privacy Act system of records to its inventory of records systems. This system is known as the National Recreation Reservation System (NRRS) USDA/FS–55, and it will make it easier for interested individuals to make advance reservations for recreation opportunities on Federal lands. USDA invites public comment on this new records system.

DATES: Comments must be received, in writing, on or before May 29, 2008.

EFFECTIVE DATE: This system will be adopted without further notice on June 30, 2008, unless modified to respond to comments received from the public and published in a subsequent notice.

ADDRESSES: Send written comments to the Forest Service Privacy Act Officer,

Forest Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Mail Stop 0003, Washington, DC 20250–0003. Comments may also be sent via e-mail to *wo_foia@fs.fed.us*, or via facsimile to (703) 605–5104.

FOR FURTHER INFORMATION CONTACT: Martha Ketelle, Assistant Director, Recreation, Heritage & Visitors, Forest Service, U. S. Department of Agriculture, 1400 Independence Avenue, SW., Mailstop 1125, Washington, DC 20250, at (202) 205–1348, or via e-mail to *mketelle@fs.fed.us*, or via facsimile to (202) 205–1145. Additional information concerning the National Recreation Reservation System may be obtained on the Internet at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml*.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act (5 U.S.C. 552a), USDA is proposing to add a new system of records entitled the National Recreation Reservation System (NRRS) USDA/FS–55 that will provide the public with a Web-based electronic forms system to make reservations. The NRRS will be managed by the U.S. Forest Service, an agency of USDA. NRRS will allow the U.S. Forest Service to electronically charge individual credit cards for use of National Forest lands. NRRS will verify who paid a recreation fee, monitor recreation fee payments, and the use of Government facilities, and appropriately schedule rentals of facilities. An estimated 2,000,000 individual records are expected to be collected in the system and stored on servers located in Ballston Spa, New York. A Federal contractor is currently responsible for managing the NRRS under the management, supervision, and authority of the U.S. Forest Service. The USDA Forest Service is the administrative agency for this system, but it may be used by other agencies that manage public lands. The USDA invites comments on all portions of this notice. Those who submit comments should be aware that all comments, including names and addresses, when provided, are placed in the record and are available for public inspection. Individuals wishing to inspect comments should call the Forest Service Freedom of Information Act and Privacy Act Office at (202) 205–1542 to make arrangements.

A report on the new system of records, required by 5 U.S.C. 552a(r) as implemented by Office of Management and Budget Circular A–130, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Dated: April 17, 2008.

Edward T. Schafer,

Secretary.

System Name:

National Recreation Reservation System, (NRRS) USDA/FS–55.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

These records are collected in a Web-based system located on servers maintained by a Federal contractor in Ballston Spa, New York. Paper records for use with the miscellaneous recreation system are maintained at the Regional Offices, Forest Supervisors Offices, and District Ranger Offices. The addresses for the Regional Foresters and Forest Supervisors are listed in 36 CFR Part 200, Subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include members of the public who register online to receive information about the program or make advanced reservations for recreation campgrounds, activities, wilderness permits, tours, and ticketing on public lands that are managed by the United States Department of Agriculture (Forest Service); the United States Army Corps of Engineers; and the United States Department of the Interior, (National Park Service, Bureau of Land Management, and Bureau of Reclamation). Individuals covered by the system also include Federal concessionaires, contractors, and volunteers under supervision by Federal employees who are responsible for managing data specific to recreation site inventory.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of recreation inventory, reservation information, customers' names, addresses, and credit card information (for individuals securing reservations), previous booking data, and agency-specific information necessary to manage the program and maintain inventory data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Lands Recreation Enhancement Act, 16 U.S.C. 6801–6814. The Organic Act of 1897, as amended (FSM 1021.11a), instructs the Secretary of Agriculture to preserve and to regulate occupancy and use of the National Forests (16 U.S.C. 473–478, 479–482, 551). Prohibitions on the use of National Forest lands are contained in 16 U.S.C. 475; the Term Permit Act of 1915. (38 Stat. 1101, as amended, 16 U.S.C. 497); the Multiple Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215, as amended; 16 U.S.C. 528–531); the 1964 Wilderness Act (16 U.S.C. 1131–1136); the National Historic Preservation Act of 1966. (Pub. L. 89–665; 80 Stat. 915, 16 U.S.C. 470 et seq.); the Land and Water Conservation Fund (L&WCF) Act of 1965, as amended (Pub. L. 93–303, June 7, 1974; 78 Stat. 897, as amended; 16 U.S.C. 460*l* (4) to 460*l* (11m); 23 U.S.C. 120 (note), and the Omnibus Budget Reconciliation Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

PURPOSE(S):

The purpose of this system of records is to allow individuals to make advance reservations for Federal recreation opportunities, which include recreation campgrounds and other recreation sites, various recreation activities, wilderness permits, tours, and ticketing for several Federal agencies managing public lands; and to enhance individual access to Government information and services regarding Federal recreation opportunities.

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

(1) U.S. Department of Agriculture, Forest Service (USDA/FS) may share information about reservation, recreation, and revenue statistics with authorized individuals at participating agencies. These agencies include the United States Army Corps of Engineers and the United States Department of the Interior (National Park Service, Bureau of Land Management, and Bureau of Reclamation) and their cooperators and contractors who are performing a service related to this system of records, and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, set out at 5 U.S.C. 552a(m).

(2) USDA/FS may disclose information from this system of records to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating or prosecuting a violation of law, or of

enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

(3) USDA/FS may disclose information from this system of records to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system, which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(4) USDA/FS may disclose information from this system of records to a congressional office from the record of an individual provided that individual gave the congressional office permission to inquire on his or her behalf.

(5) USDA/FS may disclose information from this system of records to the National Archives and Records Administration and to General Services Administration, which are disclosures authorized pursuant to 44 U.S.C. 2904 and 2906.

(6) USDA/FS may disclose information to contractors and other parties it engages to assist it in administering the program. Such contractors and other parties will be bound by the nondisclosure provisions of the Privacy Act.

(7) USDA/FS may disclose credit card information to process customer payments for reservations.

(8) USDA/FS may disclose information to appropriate agencies, entities, and persons when (a) The agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by USDA or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None, with exception to disclose any breach of security as per Payment Card Industry Data Security Standard requirements and Federal and State laws.

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

STORAGE:

Electronic information is stored in a database hosted on secure servers located in Ballston Spa, New York. Paper records are stored primarily in file folders.

RETRIEVAL:

Data is retrieved electronically by name of individual, address, credit card number, reservation number and phone number. Paper records are maintained under each individual's name.

SAFEGUARDS:

Access to the records is available only by username and password and only for those individuals with appropriate system roles. All records containing personal information will be maintained in secured file cabinets and secured computer rooms and/or tape libraries that can be accessed only by authorized personnel. Access to electronic records is controlled through a system of computer access identification and authorizations utilizing passwords. Access to the data is controlled by database management system software. Any personal data transmitted over a network is encrypted.

RETENTION AND DISPOSAL:

Credit card information is purged 13 months after the departure date. Individually -identifiable information about a reservation will be retained after the date of the reservation, until expiration of the period for which a refund may be requested. All records are retained and disposed of in accordance with the appropriate General Records Schedules of the National Archives and Records Administration.

SYSTEM MANAGERS(S) AND ADDRESS:

Chief Information Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. 20250

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him or her from the system manager listed above. The request should be in writing and should contain the name and address of the requester.

RECORD ACCESS PROCEDURES:

Use the same procedures as those prescribed in Notification Procedures.

CONTESTING RECORD PROCEDURES:

Use same procedures as those prescribed in Notification Procedures.

RECORD SOURCE CATEGORIES:

Personal information in this system will be provided by individual customers. The Inventory data will be provided by data stewards from the following Federal agencies: United States Army Corps of Engineers, United States Department of Agriculture (Forest Service), and United States Department of the Interior (National Park Service, Bureau of Land Management, and Bureau of Reclamation). For trip planning, data will be provided by the following: United States Department of the Interior (U.S. Fish and Wildlife Service), National Archives and Records Administration, United States Department of Commerce (National Oceanic and Atmospheric Administration), Smithsonian Institution, United States Department of Transportation (Federal Highway Administration), and the Tennessee Valley Authority; with links to Travelocity and maps from Google.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–9325 Filed 4–28–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Management Planning Adjustment of Previously Initiated Land Management Plan Revisions for the Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands, in Colorado and Kansas

AGENCY: The Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands, USDA Forest Service.

Authority: 36 CFR 219.14(b)(3).

Notice: Resumption of planning and adjustment to the National Forest System Land Management Planning Rule (2008 Planning Rule) for previously-initiated land management plan revisions; the Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands.

SUMMARY: The USDA Forest Service is resuming preparation of the Pike and

San Isabel National Forests land management plan (Forests Plan), and the Cimarron and Comanche National Grasslands land management plan (Grasslands Plan) as directed by the National Forest Management Act (NFMA). Preparation of these two plans, which will replace the single 1984 land and resource management plan (as amended) (1984 Plan) for all four units, was halted when the 2005 Planning Rule was enjoined. A new planning rule (36 CFR 219) was implemented on April 21, 2008, allowing the planning processes to be resumed.

DATES: Resumption is effective upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barb Masinton, 719–553–1475.

SUPPLEMENTARY INFORMATION: The Responsible Official (Forest Supervisor) for the Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands will resume the previously-initiated land management plan (plan) revisions under the requirements of the 2008 Planning Rule. The plan revisions will be conducted in accordance with all Forest Service directives applicable to the 2008 Planning Rule.

All four units (the Pike and the San Isabel National Forests, and the Cimarron and the Comanche National Grasslands) fall under the 1984 Plan. As part of the revision process, the Responsible Official is preparing two separate plans. The revision of the 1984 Plan was initiated iii 1999 under the 1982 Planning Rule, a process that was transitioned to the 2005 Planning Rule on May 26, 2005 (**Federal Register** Notice Vol. 70(101), p. 30411). The first of the two plans to be released is the Grasslands Plan. Several public meetings were conducted to provide opportunities for interested parties to collaborate on the development of the Grasslands Plan. A proposed (draft) plan was available for a 90-day public comment period from December 28, 2005 through April 3, 2006, and a pre decisional version was available in March 2007. An objection period was underway when the 2005 Planning Rule was enjoined. The planning process for the second of the two plans, the Forests Plan, was also underway when the 2005 Planning Rule was enjoined; a proposed plan was not yet available for public review.

On March 30, 2007, the federal district court for the Northern District of California enjoined the Forest Service from implementing and using the 2005 Planning Rule until the agency provided notice of the rulemaking and a comment period and conducted an assessment of the rule's effects on the environment and completed consultation under the Endangered Species Act. Plan revisions of both the Forests Plan and the Grasslands Plan were suspended in response to the injunction. On April 21, 2008, the Forest Service adopted a new planning rule-the 2008 Planning Rule (36 CFR 219 (2008)). The 2008 Planning Rule explicitly allows the resumption of plan revisions that followed the requirements of the 2005 Planning Rule (36 CFR part 219 (2005)) based on a finding that the revision process conforms to the 2008 Planning Rule (36 CFR 219. 14(b)(3)(ii)).

Based on the discussions above, I find that the planning actions taken before April 21, 2008 conform to the planning requirements of the 2008 Planning Rule and the plan revision processes undertaken to date for each plan may resume.

The public will continue to be invited to collaborate during the resumed development of each revised plan. For information about the revision of these plans, documents associated with both revision efforts, including schedules, see: *http://www.fs.fed.us/r2/psicc/projects/forest_revisionlindex.shtml*

Dated: April 23, 2008.

Robert J. Leaverton,

Forest Supervisor.

[FR Doc. E8–9311 Filed 4–28–08; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rosemont Copper Project, Coronado National Forest, Pima County, AZ

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On March 13, 2008, the USDA Forest Service, Coronado National Forest, published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Rosemont Copper Project (73 **Federal Register** 13527). This revised NOI advises the public of a change in the duration of the period during which the Forest Service will accept comments on the scope of the Rosemont Copper Project EIS. It also provides the locations for three public hearings at which oral testimony will be taken, along with written comments. All other information given in the original NOT will remain the same until further notice is given.

Public hearing dates and locations are as follows:

- May 12, 2008 in Elgin, Arizona.
- June 7, 2008 in Sahuarita, Arizona.
- June 30, 2008 in Tucson, Arizona.

DATES: The NOI published on March 13, 2008, advises the public that written and oral comments concerning the scope of the ETS analysis must be received by the Forest Service within 30 days following the date of publication of the NOI in the **Federal Register**. This duration of the scoping period has been extended by the Forest Service from 30 days to 120 days. Thus, the scoping period for the EIS will conclude on July 14, 2008. All written and oral public comments must be received by that date to be given full consideration during the EIS analysis.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact Ms. Beverley A. Everson, Team Leader, at (520) 388–8300.

Dated: April 23, 2008.

Jeanine A. Derby,

Forest Supervisor.

[FR Doc. E8–9307 Filed 4–28–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Maryland, New Jersey, and New York Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: We are announcing designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (USGSA): Maryland Department of Agriculture (Maryland); and D. R. Schaal Agency, Inc. (Schaal).

DATES: Effective June 1, 2008.

ADDRESSES: USDA, GIPSA, Karen Guagliardo, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov*.

Read Applications: All applications will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: In the December 5, 2007, **Federal Register** (72 FR 68555), we requested applications for designation to provide official services in the unassigned geographic

area of Maryland, New Jersey, and New York. Applications were due by January 4, 2008.

There were four applicants for designation to provide official services:

- Maryland Department of Agriculture (Maryland) applied for Maryland. Maryland is not currently designated.
- D. R. Schaal Agency, Inc. (Schaal) applied for New Jersey and New York.
- Kankakee Grain Inspection, Inc. (Kankakee) applied for Maryland, New Jersey, and New York.
- Mid-Iowa Grain Inspection, Inc. (Mid-Iowa) applied for Maryland, New Jersey and New York.

In the February 15, 2008, **Federal Register** (73 FR 8851), we requested comments on the applications for designation to provide official services in Maryland, New Jersey, and New York. Comments were due by March 17, 2008. GIPSA received no comments.

We evaluated all available information regarding the designation criteria in section 7(f)(l) of USGSA (7 U.S.C. 79 (f)) and determined that Maryland and Schaal are best able to provide official services in the geographic areas specified in the December 5, 2007, **Federal Register**, for which they applied.

Maryland is designated for the entire State of Maryland, except those export port locations served by GIPSA, effective June 1, 2008, and terminating June 30, 2010.

Effective June 1, 2008, Schaal's present geographic area is amended to include the entire States of New Jersey and New York, except those export port locations served by GIPSA. Schaal's current designation to provide official services terminates September 30, 2010.

Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start-end
Maryland	Annapolis, MD 410–841–5769	6/1/2008–6/30/2010
Schaal	Belmond, IA 641–444–3122 Additional Location: Albert Lea, MN.	6/1/2008–9/30/2010

Section 7(f)(1) of the USGSA, authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)(1)).

Section 7(g)(1) of USGSA provides that designations of official agencies will terminate not later than three years and may be renewed according to the criteria and procedures prescribed in section 7(f) of USGSA.

Authority: 7 U.S.C. 71–87k.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–9324 Filed 4–28–08; 8:45 am]

BILLING CODE 3410–KD–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting—May 13, 2008—6:30 p.m.

In connection with its investigation into the cause of a November 22, 2006, explosion and fire at the CAI/Arnel manufacturing facility in Danvers, Massachusetts, the United States Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a public meeting on May 13, 2008, starting at 6:30 p.m. in the North Shore ballroom at the Sheraton Ferncroft Resort, 50 Ferncroft Road, Danvers, MA 01923. At the meeting CSB staff will present to the Board the results of their investigation into this incident. After the presentation by the CSB investigators there will be presentations by witnesses discussing changes in local and state safety oversight that have been proposed since the November 22, 2006, accident at CAI/Arnel. This will be followed by a public comment period prior to a Board vote on the report.

On November 22, 2006, at about 2:45 a.m., a violent explosion at the CAI/Arnel manufacturing facility rocked the town of Danvers, MA. The explosion and subsequent fire destroyed the facility, heavily damaged dozens of nearby homes and businesses, and shattered windows as far away as one mile. At least 10 residents required hospital treatment for cuts and bruises. More than 16 homes and three businesses were damaged beyond repair. Dozens of boats at the nearby marina were heavily damaged by blast overpressure and debris strikes.

Local authorities ordered the evacuation of more than 300 residents within a half-mile of the facility. Many residents could not return for many months while they waited for their houses to be rebuilt or repaired. Seventeen months after the explosion, six homes had yet to be reoccupied as repairs were not completed.

Following the conclusion of the public comment period, the Board will consider whether to approve the final report and recommendations. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings presented by staff should be considered final. Only after the Board has considered the final staff presentation, listened to the witnesses and the public comments, and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov*.

Christopher W. Warner,

General Counsel.

[FR Doc. 08–1200 Filed 4–25–08; 3:33pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice from Brazil: Initiation of Antidumping Duty Changed Circumstances Review

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

EFFECTIVE DATE: April 29, 2008.

SUMMARY: Tropicana Products, Inc. (Tropicana) has requested that the Department initiate a changed circumstances review to consider partially revoking the order on certain orange juice from Brazil to exclude ultra low pulp orange juice (ULPOJ) pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) and 351.222(g)(1)(i). In response to this request, the Department of Commerce (the Department) is

initiating a changed circumstances review.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. *See Antidumping Duty Order: Certain Orange Juice from Brazil*, 72 FR 12183 (Mar. 9, 2006).

On June 14, 2007, Tropicana requested that the Department initiate a changed circumstances review to consider partially revoking the antidumping duty order on certain orange juice from Brazil to exclude ULPOJ. According to Tropicana, producers accounting for substantially all of the production of the domestic like product have no interest in maintaining the order on ULPOJ.

On July 24, 2007, we requested documentation from Tropicana regarding its industry support assertions and the documentation to support the pulp content of ULPOJ. On January 31, 2008, Tropicana responded to the Department's request for information, providing: 1) letters of support from processors either supporting or not opposing Tropicana's request to exclude ULPOJ from the order; 2) a calculation of the level of industry support; and 3) documentation regarding the pulp content of ULPOJ.

On February 29, 2008, we received comments from Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), and Citrus World, Inc. (collectively, ''the petitioners''), regarding Tropicana's request. The petitioners contend that the Department must consider the position of the entire domestic industry (*i.e.*, both processors and growers) when determining the level of industry support, as was done for purposes of the initiation of this proceeding. According to the petitioners, when the growers are considered, there will be an insufficient level of industry support necessary for the Department to partially revoke the order under 19 CFR 351.222(g)(1)(i). In addition, the petitioners note that, contrary to Tropicana's assertion, the U.S. domestic industry is capable of producing ULPOJ. Therefore, the petitioners urge the Department to reject Tropicana's request and not initiate this changed circumstances review.

On March 6, 2008, we requested additional information from Tropicana regarding an incomplete letter contained in its January 31 response. On March 10, 2008, Tropicana submitted the requested information.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as not–from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra–Frutesp S.A., Sucocitrico Cutrale, S.A. , Fischer S/A - Agroindustria, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail–sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In accordance with 19 CFR 351.216(d), the Department finds there is sufficient information to warrant initiating a changed circumstances review. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review to determine whether the Department should partially revoke the order on certain orange juice from Brazil to exclude ULPOJ.

While Tropicana contends that it has sufficient industry support under 19 CFR 351.222(g)(1)(i) for the Department to partially revoke the order to exclude ULPOJ, we note that the petitioners have questioned Tropicana's exclusion of orange growers from the calculation of industry support. We will address the level of industry support for Tropicana's request in the context of this proceeding.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: April 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–9337 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Consent Motion To Terminate Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade

Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate Panel Review of the final results of the second antidumping administrative review respecting Carbon and Certain Alloy Steel Wire Rod from Canada (Secretariat File No. USA–CDA–2006–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the case participants, the panel review is terminated as of April 18, 2008. A panel was appointed to this panel review and has been dismissed pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* effective April 18, 2008.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: April 22, 2008.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E8–9296 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–936]

Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation

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

DATES: *Effective Date:* April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Eric Greynolds, 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) 482–4793 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 3, 2008, the Department of Commerce (''Department'') received the Petition concerning imports of certain circular welded carbon quality steel line pipe (''welded line pipe'') from the People's Republic of China (''PRC'') filed in proper form by United States Steel Corporation, Maverick Tube Corporation, Tex-Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and AFL–CIO–CLC (collectively, ''Petitioners''). *See* Imposition of Antidumping and Countervailing Duties: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea, dated April 3, 2008 (''Petition'').

On April 9 and 10, 2008, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department's requests, Petitioners filed additional information supplementing the Petition on April 14, 2008, including one submission on general issues (Response to the Department Questionnaire Concerning Volume I of the Petition, dated April 14, 2008 (''Supp. Response'')) and one submission on the imposition of countervailing duties (''CVD'') (Response to the Department Questionnaires Concerning Volume III of the Petition, dated April 14, 2008 (''Supp. CVD Response''')). On April 16, 2008, the Department called Petitioners to request certain information relating to the Petition. *See* Memorandum to the File from Meredith A.W. Rutherford, Import Policy Analyst, regarding Petitions for the Imposition of Antidumping and Countervailing Duties—Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea: Phone Call with Petitioner Regarding Industry Support, dated April 16, 2008. On April 17, 2008, the Department issued a request for additional information and clarification of certain areas of the Petition concerning the imposition of countervailing duties. On April 18, 2008, Wheatland Tube Company, a U.S. manufacturer of welded line pipe, filed a letter in support of the Petition. On April 21, 2008, Petitioners filed additional information in response to the April 16, 2008, memorandum to the file. *See* Response to the Department's Second Request for Additional Information Concerning the People's Republic of China and the Republic of Korea, dated April 21, 2008 (''Second Supp. Response''). Petitioners also filed a response to the Department's April 17, 2008, request for additional information on the imposition of countervailing duties. *See* Response to the Department's Request for Additional Information Concerning Volume III of the Petition filed on April 3, 2008 (''Second CVD Supp. Response'').

On April 21, 2008, the Department called Petitioners regarding the scope language. *See* Memorandum to the File from Norbert Gannon, Supervisory Import Policy Analyst, regarding Petitions for the Imposition of Antidumping and Countervailing Duties—Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea: Phone Call with Petitioners Regarding Industry Support, dated April 21, 2008. Additionally, on April 21, 2008, Stupp Corporation, a domestic producer of subject merchandise, filed a letter in support of the Petition.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), Petitioners allege that manufacturers, producers, or exporters of welded line pipe in the PRC receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and Petitioners have demonstrated sufficient industry support with respect to the CVD investigation (*see* ''Determination of

Industry Support for the Petition'' section below).

Period of Investigation

The period of investigation (''POI'') is January 1, 2007, through December 31, 2007.

Scope of Investigation

The merchandise covered by this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (''welded line pipe''), not more that 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically, the term ''carbon quality'' includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

(i) 2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (''API'') (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API line pipe stencil is covered by the scope of this investigation.

The line pipe products that are the subject of this investigation are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. The scope of this investigation covers line pipe which, we recognize, may include certain merchandise potentially subject to the on-going antidumping (AD) and CVD investigations of circular welded pipe (CWP investigations). *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination,* 73 FR 2445, January 15, 2008; *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 72 FR 63875, November 13, 2007. Given that the scope issue has not been finally resolved in the CWP investigations, for purposes of this initiation, we have defined the scope to include the potential overlap. However, we intend to resolve the issue to ensure that there will be no overlap between the scopes in the CWP and welded line pipe cases. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 13, 2008, which is 20 calendar days from the date of signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the CVD petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on April 18, 2008. *See* the April 18, 2008, Memorandum to the File, entitled, ''Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petition regarding Circular Welded Carbon Quality Steel Line Pipe,'' on file in the Central Records Unit (''CRU'') of the Department of Commerce, Room 1117.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT

2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that welded line pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Countervailing Duty Investigation Initiation Checklist: Circular Carbon Quality Steel Line Pipe from the People's Republic of China,'' (''Initiation Checklist'') Industry Support at Attachment II, on file in the CRU.

In determining whether Petitioners have standing (*i.e.*, those domestic workers and producers supporting the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, Petitioners provided their shipments for the domestic like product for the year 2007, and compared them to shipments of the domestic like product for the industry. In the Petition, Petitioners demonstrated the correlation between shipments and production. *See* Petition, Volume I, at 3, and Exhibit 3b. Based on the fact that total industry production data for the domestic like product for 2007 is not reasonably available, and that Petitioners have established that shipments are a reasonable proxy for production data, we have relied upon shipment data for purposes of measuring industry support. For further discussion *see* Initiation Checklist, at Attachment II (Industry Support).

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 702(c)(4)(D) of the Act. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(I) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Initiation Checklist* at Attachment II (Industry Support). The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are an interested party as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate. *See Initiation Checklist* at Attachment II (Industry Support).

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of welded line pipe from the PRC are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industry producing welded line pipe. In addition, Petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, a decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Injury).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the CVD petition on welded line pipe from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of welded line pipe in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Preferential Loans

1. Preferential Lending of Policy Loans to State-Owned Enterprises (''SOEs'') and the Steel Industry by State-Owned and Controlled Banks.

2. Preferential Loans for Key Projects and Technologies.

B. Equity Infusions and Debt-to-Equity Swaps

1. Equity Infusions into Baosteel.

2. Debt-to-Equity Swaps for SOEs.

C. Tax Benefit Programs

1. The ''Two Free, Three Half'' Program.

2. Income Tax Reduction for Export-Oriented Foreign Invested Enterprises (''FIEs'').

3. Income Tax Reductions for FIEs Based on Location.
4. Preferential Tax Programs for FIEs that Quality as Technology-Intensive or Knowledge-Intensive.
5. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises.
6. Preferential Tax Programs for FIEs that are Engaged in Research and Development.
7. Income Tax Reduction for FIEs that Reinvest Profits into Export-Oriented Enterprises.
8. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs.
9. Income Tax Credits on Purchases of Domestically-produced Equipment by FIEs.
10. Income Tax Credits on Purchases of Domestically-produced Equipment by Domestically-Owned Companies.

D. Value-Added Tax (''VAT'') Programs

1. VAT Exemptions for Use of Imported Equipment.
2. VAT Export Rebates.

E. Land Grants and Discounts

F. Provision of Inputs for Less Than Adequate Remuneration

1. Hot-Rolled Steel.
2. Electricity.
3. Water.

G. Grant Programs

1. Interest Subsidies for Key Projects and Technologies.
2. State Key Technologies Renovation Project Fund.
3. Central Government's Famous Brands Program.
4. Government of Guandong Province Provision of Grants to Companies for Outward Expansion and Export Performance.
5. Export Interest Subsidy Program.
6. Grants to State Owned Enterprises Operating at Loss.

H. Provincial Programs

1. Northeast Revitalization Program.
2. Liaoning Province Framework.
3. The ''Five Points One Line'' Program.
4. Liaoning Province Grants.
5. Sub-Central Government Programs to Promote Famous Brands.

For further information explaining why the Department is investigating these programs, *see* Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. VAT Refunds Available to Companies Operating in Specific Locations

Petitioners allege that VAT refunds are available to companies that are located in the Economic Development Zone of Hainan. Specifically, under the ''Preferential Policies Regarding Investment by Manufacturer,'' high-tech or labor intensive enterprises with an investment of more than RMB 3 billion and more than 1,000 local employees are refunded 25 percent of the VAT paid on domestic sales, the percentage of the tax received by the local government. The subsidy starts the first year the company has production and sales and continues for five years. Petitioners, however, did not demonstrate that producers/exporters of welded line pipe are located in the Hainan Province or explain why such information is unavailable. Therefore, we are not investigating this program.

2. Preferential Tax Programs for Enterprises Making Little Profit

Petitioners assert that China's subsidies notification to the World Trade Organization (''WTO'') indicates that the Chinese government (''GOC'') provides preferential tax treatment to enterprises making little profit. This program, which is authorized by the Ministry of Finance, provides an 18 percent income tax reduction for enterprises which have annual taxable income of less than RMB 30,000 and a 27 percent income tax reduction to enterprises which have annual taxable income between RMB 30,000 and RMB 100,000. Petitioners, however, have not established with reasonably available information that ''enterprises making little profit'' are a *de jure* or *de facto* specific group. Petitioners failed to provide an explanation of why companies with access to this program comprise an enterprise or industry, or group of enterprises or industries, as those terms are normally interpreted by the Department. Therefore, we are not investigating this program.

3. Preferential Tax Programs for Enterprises Engaged in Research and Development

Petitioners allege that the GOC provides preferential tax policies for domestic-invested enterprises engaged in research and development. Specifically, Petitioners claim that under this program, authorized by the Ministry of Finance, the costs associated with research and development of new products, new technologies, and new crafts which have increased 10 percent or more from the previous year, are offset by 150 percent from the taxable income of that year. Petitioners, however, have not established with reasonably available information that ''domestic enterprises'' are a *de jure* or *de facto* specific group. Petitioners failed to provide an explanation of why companies with access to this program comprise an enterprise or industry, or group of enterprises or industries, as those terms are normally interpreted by the Department. Therefore, we are not investigating this program.

4. Central Government Grants and Loans

Petitioners allege that the government provides grants and loans for technology and research. Petitioners claim that one such program is administered by the Ministry of Finance pursuant to State Council Circular No. 99 of 1987, which is referenced in China's WTO accession. Petitioners assert that this grant program is intended to benefit preferred industries such as the steel industry, including welded line pipe producers. Petitioners, however, have not provided adequate documentation to support the allegation that this program is specific. For example, the evidence provided by Petitioners does not support the claim that this program is specific to state-owned enterprises or to the steel industry. We, therefore, are not investigating this program.

5. Hunan Province Grants and Loans

Petitioners allege that in 1999, the Hunan Province provided approximately RMB 300 million, in the form of grants and reduced-interest loans, for technological upgrades and for hi-tech companies located in the province. Petitioners claim that welded line pipe producers located in Hunan Province likely benefited from the program. Petitioners, however, have failed to demonstrate that welded line pipe producers are located in Hunan Province. We, therefore, are not investigating this program.

6. Government-Mandated Mergers and Transfers of Ownership on Terms Inconsistent With Commercial Considerations

Petitioners allege that the GOC provides benefits to welded line pipe producers through government-mandated mergers and transfers of ownership on terms inconsistent with commercial considerations. Petitioners maintain that the mergers are driven by the GOC's Eleventh FYP and China's Steel Policy. Petitioners allege that because many Chinese steel companies are controlled by the government, the GOC can essentially order companies to merge. Petitioners allege that such mergers commonly involve offering ownership stakes in state-owned steel companies to other, larger steel producers at prices below market value, or even for free. Petitioners, however, fail to explain how mergers and restructuring of state-owned enterprises provide a financial contribution in light of the Department's past practice in addressing restructuring of government-owned steel companies. *See*, *e.g.*, *Final Affirmative Countervailing Duty*

Determination: Certain Steel Products from Italy, 58 FR 37327 (July 9, 1993). Therefore, we are not investigating the provision of ''other companies'' for less than adequate remuneration.

7. Other Grant Programs

Petitioners assert that a review of available financial reports of Chinese welded line pipe producers indicates that many of the producers have benefitted from direct cash grants provided under other grant programs and policies administered by the GOC. Petitioners, however, have not adequately established with reasonably available evidence how these programs are specific. Petitioners also have not established whether these grants are a result of programs separate from those which Petitioners have already alleged. We, therefore, are not investigating this program.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy (''NME'') country in all past AD investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, (''TRBs'') From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003).

In the final affirmative CVD determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying Issues and Decision Memorandum at Comment 1. Therefore, because Petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a CVD investigation of welded line pipe from the PRC, initiation of a CVD investigation is warranted in this case.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the GOC. As soon as possible and to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized welded line pipe from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* Section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–861, A–570–935]

Certain Circular Welded Carbon Quality Steel Line Pipe From the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations

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

DATES: *Effective Date:* April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Dena Crossland (Republic of Korea), Jeffrey Pederson, or Rebecca Pandolph (People's Republic of China), AD/CVD Operations, Office 7 and Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3362, 202–482–2769, or 202–482–3627, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 3, 2008, the Department of Commerce (''Department'') received the petition concerning imports of certain circular welded carbon quality steel line pipe (''welded line pipe'') from the Republic of Korea (''Korea'') and the People's Republic of China (''PRC'') filed in proper form by United States Steel Corporation (''U.S. Steel''), Maverick Tube Corporation (''Maverick''), Tex-Tube Company (''Tex-Tube''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and AFL–CIO–CLC (''United Steelworkers'') (collectively, ''Petitioners''). *See* Imposition of Antidumping and Countervailing Duties: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea, dated April 3, 2008 (in four volumes) (''Petition'').

On April 9, 2008, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department's requests, Petitioners filed additional information supplementing the Petition on April 14, 2008, including one submission on general issues (Response to the Department Questionnaire Concerning Volume I of the Petition, dated April 14, 2008 (''Supp. Response'')), one distinct submission on Korea-only material (Response to the Department Questionnaire Concerning the Republic of Korea, dated April 14, 2008 (''Supp. Korea Response'')), and one distinct submission on PRC-only material (Response to the Department Questionnaire Concerning the People's Republic of China, dated April 14, 2008 (''Supp. PRC AD Response'')). On April 16 and April 17, 2008, the Department called Petitioners to request certain information relating to the Petition, the Supp. Korea Response, and the Supp. PRC AD Response. *See* Memorandum to the File from Meredith A.W. Rutherford,

Import Policy Analyst, regarding Petitions for the Imposition of Antidumping and Countervailing Duties—Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea: Phone Call with Petitioner Regarding Industry Support, dated April 16, 2008; Memorandum to the File from Juanita H. Chen, Special Assistant to the SEC Office, through Edward C. Yang, Director, SEC Office, AD/CVD Operations, China/NME Group, regarding Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Request for Information, dated April 17, 2008; and Memorandum to the File from Dena Crossland, Analyst, through Patrick Edwards, Acting Program Manager, AD/CVD Operations, Office 7, regarding Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea: Request for Information, dated April 17, 2008. On April 18, 2008, Wheatland Tube Company, a U.S. manufacturer of welded line pipe, filed a letter in support of the Petition. On April 21, 2008, Petitioners filed additional information in response to the Department's April 16, 2008, and April 17, 2008, request for information. *See* Response to the Department's Second Request for Additional Information Concerning the People's Republic of China and the Republic of Korea, dated April 21, 2008 (''Second Supp. Response''); Response to the Department's Second Request for Additional Information Concerning the People's Republic of China, dated April 21, 2008 (''Second Supp. PRC AD Response''); and Response to the Department's Second Request for Additional Information Concerning the Republic of Korea, dated April 21, 2008 (''Second Supp. Korea Response''). On April 21, 2008, The Department called Petitioners regarding the scope language. *See* Memorandum to the File from Norbert Gannon, Supervisory Import Policy Analyst, regarding Petitions for the Imposition of Antidumping and Countervailing Duties—Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea: Phone Call with Petitioner Regarding Scope, dated April 21, 2008. Additionally, on April 21, 2008, Stupp Corporation, a domestic producer of subject merchandise, filed a letter in support of the Petition.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''Act''), Petitioners allege that imports of welded line pipe from Korea and the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigations that Petitioners are requesting that the Department initiate. *See* ''Determination of Industry Support for the Petition'' section below.

Periods of Investigation

The period of investigation (''POI'') for Korea is April 1, 2007, through March 31, 2008. The POI for the PRC is October 1, 2007, through March 31, 2008. See 19 CFR 351.204(b)(1).

Scope of Investigations

The merchandise covered by each of these investigations is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (''welded line pipe''), not more that 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically, the term ''carbon quality'' includes products in which (1) Iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

(i) 2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (''API'') (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API line pipe stencil is covered by the scope of these investigations.

The line pipe products that are the subject of these investigations are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. The scope of these investigations covers line pipe which, we recognize, may include certain merchandise potentially subject to the on-going antidumping (''AD'') and countervailing duty (''CVD'') investigations of circular welded pipe (''CWP''). *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 73 FR 2445 (January 15, 2008); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 63875 (November 13, 2007). Given that the scope issue has not been finally resolved in the CWP investigations, for purposes of these initiations, we have defined the scope to include the potential overlap. However, we intend to resolve the issue to ensure that there will be no overlap between the scopes in the CWP and welded line pipe cases. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 13, 2008, which is 20 calendar days

from the date of signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of welded line pipe to be reported in response to the Department's antidumping duty questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe welded line pipe, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by May 13, 2008. Additionally, rebuttal comments addressing only those issues raised in the comments must be received by May 20, 2008.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of these investigations. Based on our analysis of the information submitted on the record, we have determined that welded line pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Antidumping Duty Investigation Initiation Checklist: Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea (Korea)'' (''Korea Initiation Checklist''), Industry Support at Attachment II, and ''Antidumping Duty Investigation Initiation Checklist: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China'' (''PRC Initiation Checklist''), Industry Support at Attachment II, on file in the Central Records Unit (''CRU''), Room 1117 of the main Department of Commerce building.

With regard to section 732(c)(4)(A) of the Act, in determining whether Petitioners have standing (*i.e.*, those domestic workers and producers supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigations'' section, above. To establish industry support, Petitioners provided their shipments for the domestic like product for the year 2007, and compared them to shipments of the domestic like product for the industry. In the Petition, Petitioners demonstrated the correlation between shipments and production and argued that shipments are a good proxy for production. *See* Petition, Volume I, at 3, and Exhibit 3b. Based on the fact that total industry production data for the domestic like product for 2007 is not reasonably available, and that Petitioners have established that shipments are a reasonable proxy for production data, we have relied upon shipment data for purposes of measuring industry support. For further discussion, *see* Korea Initiation Checklist and PRC Initiation

Checklist at Attachment II (Industry Support).

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act and Korea Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support). Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Korea Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support). Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Korea Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. *See* Korea Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support).

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). Petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenues, a decline in financial performance, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Korea Initiation Checklist and PRC Initiation Checklist at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value (''LTFV'') upon which the Department based its decision to initiate these investigations of imports of welded line pipe from Korea and the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, NV (for Korea), and the factors of production (for the PRC) are also discussed in the country-specific initiation checklists. *See* Korea Initiation Checklist and PRC Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Korea

Constructed Export Price (''CEP'')

Petitioners calculated two CEPs based on price quotes for Korean-produced welded line pipe that was sold or offered for sale in the United States during the POI. Petitioners claimed that CEP was appropriate for Korea because the major Korean producers of welded line pipe typically sell through affiliated offices in the United States which, in turn, resell the welded line pipe to distributors in the United States. *See* Petition, Volume IV, at Exhibit IV–1. Petitioners made adjustments to the starting price for foreign inland freight, ocean freight, marine insurance expenses, foreign and U.S. port expenses, and estimated expenses that the affiliated distributor would incur in selling merchandise on behalf of the Korean producer in the United States. Foreign inland freight, ocean freight and insurance were calculated as the difference between the value of welded line pipe imports from Korea on a ''cost-insurance-freight'' (''CIF'') basis, and the value of welded line pipe imports from Korea on a custom's value basis as reported on the ITC's ''DataWeb'' at *http://usitc.gov/tata/hts/other/dataweb*. Petitioners calculated foreign and U.S. port expenses based on U.S. and Korean tariff schedule data. *See* Petition, Volume IV, at Exhibits 7, 7a, and 7b. *See* Korea Initiation Checklist for further discussion.

NV

Petitioners calculated NV based on home market prices for welded line pipe produced in Korea and sold or offered for sale to customers in Korea. Petitioners calculated the ex-factory NV for the home market sales by converting the reported offer prices to a per-ton basis. *See* Petition, Volume IV, at 9–12, and Korea Initiation Checklist for further discussion.

PRC

EP

Petitioners calculated two EPs based on two price quotes for welded line pipe from the PRC, offered for sale during the POI. Petitioners made adjustments to the starting prices by deducting the costs associated with exporting and delivering the product, including foreign inland freight and ocean freight, insurance expenses, foreign and U.S. port expenses and wharfage fees, and brokerage and handling expenses. *See* PRC Initiation Checklist for further discussion.

NV

Petitioners note that the PRC is a non-market economy country (''NME'') and, as the Department has not revoked this determination, such status remains in effect today. *See* Petition, Volume II, at 11. The Department has previously examined the PRC's market status and determined that NME status should continue for the PRC. *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006 (available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf*). In addition, in recent investigations, the Department has continued to determine that the PRC is an NME country. *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from The People's Republic of China*, 73 FR 6479 (February 4, 2008); *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April

19, 2007); *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners argue that India is the appropriate surrogate country for the PRC because it is at a comparable level of economic development and it is a significant producer of welded line pipe. *See* Petition, Volume II, at 12. Based on the information provided by Petitioners, the Department believes that the use of India as a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners calculated NV and dumping margins for the two U.S. prices, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on Company A's consumption rates for producing welded line pipe, arguing that it is the best information reasonably available to Petitioners.[1] *See* PRC Initiation Checklist.

Petitioners valued the factors of production to produce welded line pipe based on reasonably available, public surrogate country data, including India import data from the Monthly Statistics of the Foreign Trade of India, and prices from Energy Prices & Taxes: Second Quarter 2003, published by the International Energy Agency. Petitioners calculated labor cost using rates posted on the Department's Web site. Where Petitioners were unable to find input prices from a period contemporaneous with the POI, Petitioners adjusted for inflation using the wholesale price index for India, as published in the International Monetary Fund Publication ''International Financial Statistics.'' *See* Petition, Volume II, at 19 and Exhibit II–8. Petitioners made currency conversions, where necessary, using a simple average of the rupee/U.S. dollar exchange rate for the POI, as reported on the Department's Web site. *See* Petition, Volume II, at 19; Supp. PRC AD Response, at Exhibit Supp-9. While Petitioners calculated movement expenses using information from the Department of Commerce and the ITC, Petitioners did not include freight expenses in their calculation of surrogate values for the PRC because they could not determine the correct distance necessary for the calculations. *See* Petition, Volume II, at 19–20; Supp. PRC AD Response, at Exhibit Supp-9. For purposes of initiation, the Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable. However, the Department modified the surrogate value that Petitioners calculated for hot-rolled steel coil. *See* PRC Initiation Checklist.

Petitioners based factory overhead expenses, selling, general and administrative (''SG&A'') expenses, and profit, on financial data from the 2006–2007 annual reports of Tata Steel Limited, Jindal SAW Ltd. (''Jindal''), and Ratnamani Metals & Tubes Ltd., Indian producers of welded steel pipe using steel sheet in coils. *See* Petition, Volume II, at 22–25; Supp. PRC AD Response at Exhibit Supp-9. We recalculated factory overhead expenses, SG&A expenses, and profit using only Jindal's data because of the three potential surrogate companies, only Jindal's financial data were from a period that overlapped with the POI. In addition, we revised the financial ratios that Petitioners calculated from Jindal's data to account for expenses that were omitted from Petitioner's calculation. *See* PRC Initiation Checklist.

Fair Value Comparisons

Based on the data provided by Petitioners, with adjustments as requested by the Department, there is reason to believe that imports of welded line pipe from Korea and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of CEP and NV, calculated in accordance with sections 772(b) and 773(a)(1) of the Act, respectively, estimated dumping margins for welded line pipe from Korea range from 41.69 percent to 42.75 percent. *See* Korea Initiation Checklist. Based on a comparison of EP and NV, calculated in accordance with sections 772(a) and 773(c) of the Act, respectively, the revised estimated dumping margins for welded line pipe from the PRC range from 57.45 percent to 58.96 percent. *See* PRC Initiation Checklist.

Initiation of Antidumping Investigations

Based upon the examination of the Petition on welded line pipe from Korea and the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of welded line pipe from Korea and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we intend to make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection for Korea

For the Korean investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POI. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice, and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

Respondent Selection for the PRC

In the PRC investigation, the Department will request quantity and value information from all known exporters and producers identified, with complete contact information, in the Petition. The quantity and value data received from these exporters/producers will be used as the basis to select the mandatory respondents. The

[1] The identity of Company A is proprietary information; further discussion of Company A is available in the initiation checklist. *See* PRC Initiation Checklist.

Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). Attachment I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than May 14, 2008. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site, at *http://ia.ita.doc.gov/ia-highlights-and-news.html*. The Department will send the quantity and value questionnaire to those PRC companies identified, with complete contact information, in the Petition, Volume I, at Exhibit 6a, and in the Supp. PRC AD Response, at Supp-1.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (''Separate Rates/Combination Rates Bulletin''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf*. The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days from publication of this notice.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates/Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates/Combination Rates Bulletin, at 6.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the representatives of the Governments of Korea and the PRC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Governments of Korea and the PRC, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the International Trade Commission

The ITC will preliminarily determine, no later than May 19, 2008, whether there is a reasonable indication that imports of welded line pipe from Korea and the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to either of the investigations will result in that investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Attachment I

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all of your sales of merchandise covered by the scope of this investigation (see attachment II of this document), produced in the PRC, and exported/shipped to the United States during the period October 1, 2007 through March 31, 2008.

Market	Total quantity	Terms of sale	Total value
United States			
1. Export Price Sales.			
2. a. Exporter name. b. Address. c. Contact. d. Phone No. e. Fax No.			
3. Constructed Export Price Sales.			

Market	Total quantity	Terms of sale	Total value
4. Further Manufactured Sales.			
Total Sales.			

Because the scope of this investigation may include certain merchandise potentially subject to the on-going antidumping and countervailing duty investigations of circular welded pipe, we also request that you identify, in the chart below, the total quantity and total value that was reported in the above chart for sales of the following merchandise:

Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute (''API'') API–5L specification, when it meets the physical description set forth in the scope description in the circular welded pipe cases (*see Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 73 FR 2445 (January 15, 2008)) and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish.

Market	Total quantity	Terms of sale	Total value
United States			
1. Export Price Sales.			
2. a. Exporter name. b. Address. c. Contact. d. Phone No. e. Fax No.			
3. Constructed Export Price Sales.			
4. Further Manufactured Sales.			
Total Sales.			

Total Quantity:

• Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

• Please report all sales on the same terms (*e.g.*, free on board—port of export).

Total Value:

• All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

• Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

• Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured Sales:

• Sales of further manufactured or assembled (including re-packaged) merchandise are sales of merchandise that undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

• Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E8–9361 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH34

Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Notice; availability of permit upgrades.

SUMMARY: NMFS is soliciting applications for American Samoa longline limited entry permit upgrades. Nineteen (19) permit upgrades will be available in 2008 for Class A vessel (i.e., less than or equal to 40 ft, or 12.2 m, in length) permit holders to upgrade to larger vessel size classes. The permit upgrades are available only to Class A permit holders who participated in the fishery before March 22, 2002, and the highest priority for receiving a permit upgrade will be given to the person with the earliest date of documented participation.

DATES: Completed applications for permit upgrades must be received by NMFS by June 30, 2008.

ADDRESSES: Send completed applications to NMFS Pacific Islands Region (PIR), ATTN: ASLE Permit Upgrade, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Application forms are available from NMFS Pacific Islands Region, ATTN: Permits, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, or the Pacific Islands Region website at *www.fpir.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, NMFS PIR, Tel 808–944–2275, Fax 808–973–2941, or e-mail *Walter.Ikehara@noaa.gov*.

SUPPLEMENTARY INFORMATION: On May 25, 2005, NMFS published a final rule (70 FR 29646) that established a limited entry program for the pelagic longline fishery based in American Samoa, under Amendment 11 to the Fishery Management Plan for Pelagic Fisheries in the Western Pacific Region. American Samoa longline limited entry permits were established for four vessel size classes, based on length:

- Class A: less than or equal to 40 ft (12.2 m);
- Class B and B–1: over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive;
- Class C and C–1: over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and
- Class D and D–1: over 70 ft (21.3 m).

The limited entry program allows for 26 permit upgrades to be made available for the exclusive use of permit holders in Class A, distributed over a four-year period following the issuance of initial limited entry permits. In 2008, 19 permit upgrades will be available (11 in Class B–1, six in Class C–1, and two in Class D–1). The Regional Administrator may initially issue permit upgrades only to persons who hold Class A permits and who participated in the American Samoa pelagic longline fishery before March 22, 2002. The highest priority will be given to those with the earliest date of documented participation. Those receiving upgraded permits must surrender their Class A permits and the surrendered permits are deducted from the allowed Class A permit total.

This notice announces the availability of permit upgrades and solicits applications for the upgrades. Complete applications must include the completed and signed application form (available from NMFS PIR, see **ADDRESSES**), legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee. Documents supporting participation should show that fishing was conducted using longline gear. Applications must be received by NMFS by June 30, 2008 to be considered for eligibility for the 2008 permit upgrades.

Authoritative additional information on the American Samoa limited entry program may be found in Title 50 of the Code of Federal Regulations, part 665.

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

Dated: April 23, 2008.

Emily H. Menashes,

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

[FR Doc. E8–9392 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH44

Endangered Species; File No. 10022

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Raymond Carthy, Department of Wildlife Ecology and Conservation, University of Florida, P.O. Box 110485, Gainesville, Florida 23611–0450, has been issued a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 26, 2007, notice was published in the **Federal Register** (72 FR 65940) that a request for a scientific research permit to take sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will determine the significance of Florida's northwest coastal bays to sea turtle development. Researchers will assess sea turtle population abundance and composition, determine size classes, evaluate growth, identify seasonal movements, define overwintering behaviors, and investigate developmental migration. The permit authorizes the researchers to conduct research off the northwest coast of Florida for 5 years. Researchers will capture up to 40 loggerhead, 600 green, and 110 Kemp's ridley sea turtles using strike-net or set-net capture techniques. Animals will be weighed, measured, photographed, skin biopsied, flipper and Passive Integrated Transponder tagged, and released.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 23, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–9389 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 15 May 2008, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 21 April 2008.

Thomas Luebke,

Secretary.

[FR Doc. E8–9118 Filed 4–28–08; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination of the Committee for the Implementation of Textile Agreements to Apply a Textile Safeguard Measure on Imports of Certain Cotton Socks from Honduras

April 23, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements (''the Committee'').

ACTION: Notice.

EFFECTIVE DATE: April 29, 2008.

SUMMARY: The Committee has determined to apply a textile safeguard measure on imports of Honduran origin cotton socks classifiable under subheading 9115.95 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Title III, Subtitle B, Section 321 through Section 328 of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA-DR'' or the ''Agreement'') Implementation Act; Proclamation 7987 of February 28, 2006, paragraph (6); Proclamation 8228 of March 28, 2008, paragraph (4); Article 3.23 of the Agreement.

Notice: On April 25, 2008, the Committee determined to apply a textile safeguard measure on imports of certain cotton socks of Honduras. The relief provided by the safeguard measure applies to imports entering, or withdrawn from warehouse, for consumption during the period July 1, 2008 through December 31, 2008.

BACKGROUND:

On August 21, 2007, the Committee initiated a safeguard proceeding to determine whether imports of Honduran cotton, wool, and man-made fiber socks (merged Category 332/432 and 632 part) are causing serious damage, or actual threat thereof, to the U.S. industry producing socks, (72 FR 46611, August 21, 2007). The initiation of the safeguard proceeding commenced a 30-day period during which interested parties and stakeholders were invited to submit comments. Based on the comments received and information available to the Committee, the Committee determined that imports of Honduran origin cotton socks (Category 332) were causing serious damage, or actual threat thereof, and therefore, the Committee intended to apply a textile safeguard measure with respect to such goods. In accordance with section 4 of the Committee's Procedures for considering action under the CAFTA-DR textile and apparel safeguard, (71 FR 25157, April 28, 2006), on January 18, 2008, the United States provided written notice to the Government of Honduras indicating its intent to apply a textile safeguard measure on imports of Honduran origin cotton socks (73 FR 4542, January 25, 2008). The Committee noted that it was not at that time making a determination regarding whether to apply a safeguard measure with respect to wool and man-made fiber socks (Categories 432 and 632 Part, respectively), that were part of the original safeguards inquiry.

In accordance with Article 3.23.4 of the Agreement, following receipt of written notice by the United States of its intent to apply a safeguard measure, the Government of Honduras requested consultations. Consultations between the Governments of Honduras and the United States were held for 60 days, and by agreement of the Parties, were continued for an additional 30 day period.

The Committee has determined, pursuant to section 322(a) of the CAFTA-DR Implementation Act, that cotton socks of Honduras classifiable in subheading 6115.95 of the Harmonized Tariff Schedule of the United States (HTS) are being imported into the United States in such increased quantities and under such conditions as to cause serious damage to the domestic industry producing like or directly competitive cotton socks. The Committee has further decided, pursuant to section 322(b) of the CAFTA-DR Implementation Act, to provide relief from the imports that are the subject of this determination, in the form of a duty in the amount of 5 percent ad valorem to all CAFTA-DR originating cotton socks of Honduras classifiable in subheading 6115.95 of the HTSUS that are entered, or withdrawn from warehouse, for consumption during the period July 1, 2008 through December 31, 2008. The 5 percent ad valorem duty shall be applicable on the full value of the entered goods, regardless of the value of any United States content of such goods.

The Committee further notes that, in the course of consultations, the Government of Honduras agreed that it will not seek compensation or take any tariff action under Article 3.23.6 of the Agreement with respect to this safeguard measure.

The Committee has determined that the actions described above will remedy the serious damage and facilitate efforts by the domestic industry to make a positive adjustment to import competition. As provided in paragraph (5) of Proclamation 8228 of March 28, 2008, the United States Trade Representative will modify the HTS to reflect this determination.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–9339 Filed 4–28–08; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C00I0]

DollarDays International, LLC, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with DollarDays International, LLC, containing a civil penalty of $25,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0010, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008.

Todd A. Stevenson,

Secretary.

In the Matter of DollarDays International, LLC; CPSC Docket No. 08-C0010

Settlement Agreement

1. In accordance with 16 CFR 1118.20, DollarDays International, LLC (''DDI'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. DDI is a corporation organized and existing under the laws of Delaware, with its principal offices located in Scottsdale, Arizona. At all times relevant hereto, DDI sold apparel and accessories.

Staff Allegations

4. From December 2005 through November 2006, DDI sold to retailers or other persons 180 children's parka jackets with drawstrings through the hoods (''Drawstring Jackets'').

5. Retailers sold the Drawstring Jackets to consumers,

6. The Drawstring Jackets are ''consumer product[s],'' and, at all times relevant hereto, DDI was a ''distributor'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(l), (5), (11), and (12), 15 U.S.C. § 2052(a)(l), (5), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. DDI reported to the Commission that there had been no incidents or injuries from the Drawstring Jackets.

11. DDI's distribution in commerce of the Drawstring Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On November 30, 2006, the Commission, in cooperation with DDI, announced a recall of the Drawstring Jackets, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. DDI had presumed and actual knowledge that the Drawstring Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(l). DDI had obtained information that reasonably supported the conclusion that the Drawstring Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required DDI to immediately inform the Commission of the defect and risk.

14. DDI knowingly failed to immediately inform the Commission about the Drawstring Jackets as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected DDI to civil penalties.

DDI Response

15. DDI denies the Staff's allegations above that DDI knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over DDI.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by DDI, or a determination by the Commission, that DDI has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, DDI shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: $5,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $10,000.00 shall be paid on or before May 1, 2008; and $10,000.00 shall be paid on or before August 1, 2008. Each payment shall be made by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the

Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, DDI knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether DDI failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, DDI and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject DDI to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and DDI agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

DollarDays International, LLC
Dated: 3/19/08.
By: Marc Joseph,
President, DollarDays International, LLC
7575 E. Redfield Rd., Suite 201,
Scottsdale, AZ 85260

U.S. Consumer Product Safety Commission Staff
J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations

Dated: 4–16–08.
By: Seth B. Popkin,
Trial Attorney, Legal Division, Office of Compliance and Field Operations

In the Matter of DollarDays International, LLC; CPSC Docket No. 08–C0010

Order

Upon consideration of the Settlement Agreement entered into between DollarDays International, LLC (''DDI'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over DDI, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is *Further ordered,* that DDI shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: $5,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $10,000.00 shall be paid on or before May 1, 2008; and $10,000.00 shall be paid on or before August 1, 2008. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of DDI to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by DDI at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 22nd day of April, 2008.

By Order of the Commission:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission

[FR Doc. E8–9290 Filed 4–28–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08-COO12]

Gildan Activewear SRL, a corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Gildan Activewear SRL, containing a civil penalty of $35,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-COO12, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008.

Todd A. Stevenson,

Secretary.

In the Matter of Gildan Activewear SRL, a Corporation.; CPSC DOCKET NO. 08-C0012

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Gildan Activewear SRL (''Gildan'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established

pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Gildan is a corporation organized and existing under the laws of Barbados, with its principal offices located in St. Michael, Barbados. At all times relevant hereto, Gildan sold apparel and accessories.

Staff Allegations

4. Between January 2006 and September 2006, Gildan manufactured 146,466 youth hooded sweatshirts with drawstrings through the hoods for sale in the United States (''Drawstring Sweatshirts'').

5. Wholesale distributors sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Gildan was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Gildan reported to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. Gildan's manufacture and distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On September 20, 2006, the Commission, in cooperation with Gildan, announced a recall of Drawstring Sweatshirts, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Gildan had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Gildan had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Gildan to immediately inform the Commission of the defect and risk.

14. Gildan knowingly failed to inform the Commission about the Drawstring Sweatshirts immediately as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Gildan to civil penalties.

Gildan's Response

15. Gildan denies the Staff's allegations; specifically, as follows:

(a) Gildan did not knowingly violate the CPSA;

(b) Gildan sold the Drawstring Sweatshirts to wholesale distributors, who then, directly or indirectly, sold less than 70,000 to consumers;

(c) Gildan, in cooperation with the Commission, announced the recall of Drawstring Sweatshirts and recovered all Drawstring Sweatshirts still in the possession of wholesale distributors;

(d) Gildan had access to information that could support the conclusion that the Drawstring Sweatshirts were a potential hazard;

(e) Gildan reported the existence of the potential hazard to the Commission immediately upon having actual knowledge of the potential hazard; and

(f) Gildan has reported to the Commission that it had received no reports of any injuries from the Drawstring Sweatshirts.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Gildan.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Gildan, or a determination by the Commission, that Gildan knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Gildan shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Gildan knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Gildan failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act. Upon issuance of, and Gildan's compliance with, the final Order, the Commission agrees not to bring a civil penalty action against Gildan and each of its successors and assigns based upon the Staff's allegations contained herein regarding the Drawstring Sweatshirts.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and Order shall apply to, and be binding upon, Gildan and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order subjects Gildan to appropriate legal action in any United States District Court. For purposes of any such action, counsel of record agrees to accept service of process.

24. This Agreement may be used in interpreting the Order.

Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Gildan agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

Gildan Activewear SRL.
Dated: 04/08/08.
By: Michael R. Hoffman,
President, Gildan Activewear SRL, 34 Warrens Street,St. Michael, Barbados.
Dated: 04/08/08.
By: Thomas D. Myriek, Esquire,
Moore & Van Allen, PLLC,
Counsel for Gildan Activewear SRL,
100 North Tryon Street, Suite 4700,
Charlotte, NC 28202–4003.

U.S. Consumer Product Safety Commission Staff.
J. Gibson Mullen,
Assistant Executive Director, Office of Compliance and Field Operations.
Ronald G. Yelenik,
Acting Director, Legal Division,
Office of Compliance and Field Operations.
Dated: 04/11/08.
By: Dennis C. Kacoyanis, *Trial Attorney,* Legal Division, Office of Compliance and Field Operations.

In the Matter of Gildan Activewear SRL, a corporation.; CPSC DOCKET NO. 08–C0012

Order

Upon consideration of the Settlement Agreement entered into between Gildan Activewear SRL (''Gildan'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Gildan, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is Further Ordered, that Gildan shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00). This payment shall be made by check payable to the order of the United States Treasury within (20) calendar days of service of the Commission's Final Order accepting the Agreement. Upon the failure of Gildan to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Gildan at the federal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 22nd day of April, 2008.

By Order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. E8–9263 Filed 4–28–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–COO11]

Life is Good, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Life is Good, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–COO11, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008.

Todd A. Stevenson,

Secretary.

In the Matter of Life is Good, Inc.; CPSC Docket No. 08–C0011

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Life is Good, Inc. (''LIG'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. LIG is a corporation organized and existing under the laws of Massachusetts, with its principal offices located in Boston, Massachusetts. At all times relevant hereto, LIG sold apparel and accessories.

Staff Allegations

4. Beginning in or about March 2006, LIG distributed 2,493 children's hooded sweatshirts with drawstrings through the hoods, and, beginning in or about July 2007, LIG sold and/or held for sale or distribution after introduction into commerce, 7,793 Zippity Hoodie and Sherpa Full Zip children's hooded sweatshirts with drawstrings through the hood (collectively ''Drawstring Sweatshirts'').

5. Retailers sold Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times

relevant hereto, LIG was a ''distributor'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (5), (11), and (12), 15 U.S.C. 2052(a)(1), (5), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. LIG reported to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. LIG's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to abide by the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On April 17, 2007 and August 30, 2007, recalls of the Drawstring Sweatshirts were announced, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. LIG had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). LIG had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 1 5(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required LIG to immediately inform the Commission of the defect and risk.

14. LIG knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected LIG to civil penalties.

LIG Response

15. LIG denies the Staff's allegations above that LIG: (i) Had actual knowledge of the risk posed by Drawstring Sweatshirts and (ii) knowingly violated the CPSA. LIG states that the Drawstring Sweatshirts sold by a retailer beginning in March 2006 were reported to the Commission by the retailer, and that the retailer, in cooperation with the Commission, voluntarily recalled them in April 2007. LIG provided information to the retailer in connection with the retailer's report to the Commission. In August 2007, LIG voluntarily reported to the Commission about the Drawstring Sweatshirts it began distributing in July 2007. In August 2007, LIG, in cooperation with the Commission, conducted a voluntary recall of the Drawstring Sweatshirts distributed in July and August 2007. That recall succeeded in recovering all but five of such Drawstring Sweatshirts.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over LIG.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by LIG, or a determination by the Commission, that LIG has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, LIG shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00). The civil penalty shall be paid in two (2) installments as follows: $25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and $25,000.00 shall be paid within one hundred eighty (180) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 11 18.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, LIG knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether LIG failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, LIG and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject LIG to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and LIG agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered

by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

Life is Good, Inc.
Dated: 3/17/08.
By: Roy Heffem,
Chief Financial Optimist, Life is Good, Inc., 283–285 Newbury Street, Boston, MA 02115.
Dated: 3/17/08.
By: Jo Banse, *General Counsel,* Life is Good, Inc., 283–285 Newbury Street, Boston, MA 02115.
U.S. Consumer Product Safety Commission Staff.
J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.
Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.
Dated: 4/16/08.
By: Seth B. Popkin,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

In the Matter of Life is Good, Inc.; CPSC Docket No. 08–C0011

Order

Upon consideration of the Settlement Agreement entered into between Life is Good, Inc. (''LIG'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over LIG, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it isOrdered, that the Settlement Agreement be, and hereby is, accepted; and it isFurther Ordered, that LIG shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00). The civil penalty shall be paid in two (2) installments as follows: $25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and $25,000.00 shall be paid within one hundred eighty (180) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of LIG to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by LIG at the federal legal rate of interest set forth at 28 U.S.C. 961(a) and (b).

Provisionally accepted and Provisional Order issued on the 22nd day of April, 2008.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–9265 Filed 4–28–08; 8:45 am]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0009]

Seena International, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Seena International Inc., containing a civil penalty of $35,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-C0009, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008.

Todd A. Stevenson,

Secretary.

In the Matter of Seena International, Inc.; CPSC Docket No. 08–C0009

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Seena International, Inc. (''Seena'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Seena is a corporation organized and existing under the laws of New York, with its principal offices located in Yaphank, New York. At all times relevant hereto, Seena sold apparel.

Staff Allegations

4. From June to December 2006, Seena imported and sold children's hooded sweatshirts with drawstrings through the hoods (''Drawstring Sweatshirts''). Seena imported 61,714 Drawstring Sweatshirts and sold to retailers and distributors 45,810 of these Drawstring Sweatshirts.

5. Retailers sold Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Seena was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be

aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Seena reported to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. Seena's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On January 10, 2007, the Commission, in cooperation with Seena, announced a recall of the Drawstring Sweatshirts, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Seena had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Seena had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Seena to immediately inform the Commission of the defect and risk.

14. Seena knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Seena to civil penalties.

Seena Response

15. Seena denies the Staff's allegations above that Seena knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Seena.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Seena, or a determination by the Commission, that Seena has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Seena shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Seena knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Seena failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Seena and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Seena to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Seena agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

Seena International, Inc.

Dated: March 26, 2008.

By: Pankaj Kalia,
Vice President of Operations, Seena International, Inc., 99 Horseblock Road, P.O. Box 60, Yaphank, NY 11980.

Dated: March 28, 2008.

By: Todd A. Gabor, Esq. 132 Spruce Street, Cedarhurst, NY 11516,
Counsel to Seena International, Inc.

U.S. Consumer Product Safety Commission Staff

J. Gibson Mullan, *Assistant Executive Director*, Office of Compliance and Field Operations.

Ronald G. Yelenik, Acting Director, Legal Division Office of Compliance and Field Operations.

Dated: April 16, 2008.

By: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations.

In the Matter of Seena International, Inc.; CPSC Docket No. 08–C0009

Order

Upon consideration of the Settlement Agreement entered into between Seena International, Inc. (''Seena'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Seena, and pursuant to the authority delegated

in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is*Ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is*Further ordered*, that Seena shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Seena to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Seena at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 22nd day of April, 2008.

By Order of the Commission.

Todd A. Stevenson,
Secretary.
U.S. Consumer Product Safety Commission

[FR Doc. E8–9291 Filed 4–28–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0007]

The Cayre Group, Ltd., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with The Cayre Group, Ltd., containing a civil penalty of $40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0007, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008.

Todd A. Stevenson,

Secretary.

In the Matter of The Cayre Group, Ltd.; CPSC Docket No. 08-C0007

Settlement Agreement

1. In accordance with 16 CFR 1118.20, The Cayre Group, Ltd. (''TCG'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. TCG is a corporation organized and existing under the laws of New Jersey, with its principal offices located in New York, New York. At all times relevant hereto, TCG sold apparel.

Staff Allegations

4. From July 1 to September 1, 2006, TCG imported and/or distributed in commerce 11,942 Candies brand children's hoodie sweatshirts with drawstrings through the hoods (model 38g041k) (''Drawstring Sweatshirts'').

5. A nationwide retailer sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, TCG was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. TCG reported to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. TCG's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On September 20, 2006, the Commission, in cooperation with TCG, announced a recall of the Drawstring Sweatshirts, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. TCG had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(l). TCG had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required TCG to immediately inform the Commission of the defect and risk.

14. TCG knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d).

This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected TCG to civil penalties.

TCG Response

15. TCG denies the Staff's allegations above that TCG knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over TCG.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by TCG or a determination by the Commission, that TCG has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, TCG shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, TCG knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether TCG failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, TCG and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject TCG to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms.

The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable, The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and TCG agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

The Cayre Group, Ltd.

Dated: March 19, 2008.

Amin Cayre,

President, The Cayre Group, Ltd. 1407 Broadway, 41st Floor, New York, NY 10018

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan, *Assistant Executive Director*, Office of Compliance and Field Operations.

Ronald G. Yelenik, *Acting Director*, Legal Division, Office of Compliance and Field Operations.

Dated: April 16, 2008.

Seth B. Popkin, *Trial Attorney*, Legal Division, Office of Compliance and Field Operations.

In the Matter of The Cayre Group, Ltd.; CPSC Docket No. 08–C0007

Order

Upon consideration of the Settlement Agreement entered into between The Cayre Group, Ltd. (''TCG'') and the U.S. Consumer Product Safety Commission (''Commission'') staff; and the Commission having jurisdiction over the subject matter and over TCG, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *Ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is *Further ordered*, that TCG shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of TCG to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by TCG at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 22nd day of April, 2008.

By Order of the Commission:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission

[FR Doc. E8–9277 Filed 4–28–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0005]

The Neiman Marcus Group, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with The Neiman Marcus Group, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of the Neiman Marcus Group, Inc.; CPSC Docket No. 08–C0005

Settlement Agreement

1. In accordance with 16 CFR 1118.20, The Neiman Marcus Group, Inc. (''NMG'') and the staff (''Staff') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051—2084 (''CPSA'').

3. NMG is a corporation organized and existing under the laws of Delaware, with its principal offices located in Dallas, Texas. At all times relevant hereto, NMG sold apparel.

Staff Allegations

4. From April 2006 to July 13, 2006, NMG sold 147 True Religion fleece hoodies with drawstrings through the hood and neck (''Drawstring Sweatshirts'').

5. NMG sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, NMG was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (6), (11), and (12), 15 U.S.C. 2052(a)(l), (6), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM Fl 8 16–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. NMG reported to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. NMG's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On September 14, 2006, the Commission, in cooperation with NMG and the manufacturer, announced a recall of the Drawstring Sweatshirts, informing consumers that they should immediately stop using the Drawstring Sweatshirts.

13. NMG had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). NMG had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required NMG to immediately inform the Commission of the defect and risk.

14. NMG knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 1 5(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected NMG to civil penalties.

NMG's Response

15. NMG contests and denies the Staff's allegations.

16. NMG specifically denies that the Drawstring Sweatshirts or NMG violated the FHSA and that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death. NMG sold only 147 units over a three-month period and received no reports of incidents or injury. NMG denies that it violated the reporting requirements of 15 U.S.C. 2064(b), 2068(a)(4). Likewise, NMG denies that any alleged violation of the CPSA or FHSA occurred ''knowingly.''

17. NMG has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of NMG.

Agreement of the Parties

18. Under the CPSA, the Commission has jurisdiction over this matter and over NMG.

19. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by NMG, or a determination by the Commission, that NMG has knowingly violated the CPSA.

20. In settlement of the Staff's allegations, NMG shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

21. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

22. Upon the Commission's final acceptance of the Agreement and

issuance of the final Order, NMG knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether NMG failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Agreement and the Order.

24. The Agreement and the Order shall apply to, and be binding upon, NMG and each of its successors and assigns.

25. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject NMG to appropriate legal action.

26. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

27. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and NMG agree that severing the provision materially affects the purpose of the Agreement and the Order.

28. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

The Neiman Marcus Group, Inc.

Dated: April 2, 2008.

By: Kim Yee,
Vice President and Assistant General Counsel, The Neiman Marcus Group, Inc., One Marcus Square, 1618 Main Street, Dallas, TX 75201.

Dated: 4–3–08.

By: Christie Grymes, Esq.,
Kelley Drye & Warren LLP, 3050 K Street, NW., Suite 400, Washington, DC 20007,
Counsel for The Neiman Marcus Group, Inc.

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik, *Acting Director, Legal Division,* Office of Compliance and Field Operations.

Dated: 4–16–08.

By: Seth B. Popkin,
Trial Attorney, Legal Division,
Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of the Neiman Marcus Group, Inc.; CPSC Docket No. 08–C0005

Order

Upon consideration of the Settlement Agreement entered into between The Neiman Marcus Group, Inc. (''NMG'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over NMG, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is *Further ordered,* that NMG shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of NMG to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by NMG at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on 22nd day of April, 2008.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–9270 Filed 4–28–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0006]

True Religion Apparel, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with True Religion Apparel, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 14, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 23, 2008,

Todd A. Stevenson,
Secretary.

United States of America Consumer Product Safety Commission

In the Matter of True Religion Apparel, Inc.; CPSC Docket No. 08-C0006

Settlement Agreement

1. In accordance with 16 CFR 1118.20, True Religion Apparel, Inc. (''TRA''), and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. TRA is a corporation organized and existing under the laws of Delaware, with its principal offices located in Vernon, California. At all times relevant hereto, IRA sold apparel and accessories.

Staff Allegations

4. From March to April 2006, TRA imported and sold to retailers True Religion Brand Jeans fleece hoodies with drawstrings through the hoods (''Drawstring Sweatshirts'').

5. Retailers sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, TRA was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck arid waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM Fl 816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F 1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. TRA reported to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. TRA' s distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On September 14, 2006, the Commission, in cooperation with TRA, announced a recall of 150 of the Drawstring Sweatshirts, informing consumers that they should immediately stop using the Drawstring Sweatshirts.

13. TRA had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). TRA had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required TRA to immediately inform the Commission of the defect and risk.

14. TRA knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts, including the 150 referenced above and additional ones, as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected TRA to civil penalties.

TRA Response

15. TRA denies the Staff's allegations above that TRA knowingly violated the CPSA, denies that it unknowingly violated the CPSA, denies any wrongdoing, and states that no lawsuit has been filed against TRA relating to the subject matter of the Agreement.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over TRA.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by TRA, or a determination by the Commission, that TRA has knowingly or unknowingly violated the CPSA.

18. In settlement of the Staffs allegations, TRA shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, TRA knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether TRA failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, TRA and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject TRA to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms

of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and TRA agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

True Religion Apparel, Inc.,
Dated: 4/2/08,
By: Michael Buckley,
President,
True Religion Apparel, Inc.
2263 E. Vernon Avenue,
Vernon, CA 90058.

Dated: 4/3/08,
By: William E. Potts, Jr., Esq.,
Akin, Gump, Strauss, Hauer & Feld,
1333 New Hampshire Ave., NW.,
Washington, DC 20036,
Counsel to True Religion Apparel, Inc.

U.S. Consumer Product Safety Commission Staff,
J. Gibson Mullan,
Assistant Executive Director,
Office of Compliance and Field Operations,
Ronald G. Yelenik,
Acting Director Legal Division,
Office of Compliance and Field Operations.

Dated: 4–16–08,
By: Seth B. Popkin,
Trial Attorney,
Legal Division,
Office of Compliance and Field Operations.

United States of America Consumer Product Safety Commission

In the Matter of True Religion Apparel, Inc.; CPSC Docket No. 08–C0006

Order

Upon consideration of the Settlement Agreement entered into between True Religion Apparel, Inc. (''TRA'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over TRA, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is Further Ordered, that TRA shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of TRA to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by TRA at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

A Provisionally accepted and provisional Order issued on the 22nd day of April 2008.

By Order of the Commission:
Todd A. Stevenson,
Secretary,
U.S. Consumer Product Safety Commission.

[FR Doc. E8–9268 Filed 4–28–08; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed competition of its Office of Leadership Development and Training (hereinafter 'OLDT') cooperative agreement applications. These applications are used by current and prospective grantees to apply for funds to support training and technical assistance to Corporation grantees funded through AmeriCorps, Senior Corps, Lean and Serve and NCCC. Completion of the Grant Application is required to be considered for or obtain a Corporation cooperative agreement to provide training and technical assistance services to Corporation grantees and subgrantees.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 30, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Leadership Development and Training; Attention Ralph Morales, Acting Associate Director for Administration and Budget, Room 9809; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3477, Attention Ralph Morales, Acting Associate Director for Budget and Administration.

(4) Electronically through the Corporation's e-mail address system: *rmorales@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Ralph Morales, (202) 606–6829, or by e-mail at *rmorales@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (≤ e.g., permitting electronic submissions of responses).

Background

The Office of Leadership Development and Training Application is completed by applicant organizations interested in providing training and technical assistance services to Corporation grantees and subgrantees to train them in effectively managing their Corporation-funded programs. The

application is completed electronically using eGrants, the Corporation's Web-based grants management system.

Current Action

The Corporation seeks to recompete and revise the current applications. When revised, the application will revise/clarify eGrants instructions to reflect the new, Web-based user interface for eGrants; shorten background information on the Office of Leadership Development and Training and clarify guidance on the cost effectiveness of services provided.

The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on May 31, 2008.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Application Instructions Training and Technical Assistance Cooperative Agreements.

OMB Number: 3045–0105.

Agency Number: None.

Affected Public: Current/prospective training and technical assistance providers.

Total Respondents: 56.

Frequency: Every three years.

Average Time per Response: Averages 11.75 hours. Estimated at 16.5 hours for first-time respondents; 7 hours for current providers.

Estimated Total Burden Hours: 658 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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: April 16, 2008.

Gretchen Van der Veer,

Director, Office of Leadership Development & Training.

[FR Doc. E8–9355 Filed 4–28–08; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–38 with attached transmittal, policy justification.

Dated: April 18, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

APR 16 2008

In reply refer to:
USP001917-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-38, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost $225 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: United Kingdom**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 0 million**
Other	**$225 million**
TOTAL	**$225 million**

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continued participation in the USAF/Boeing Globemaster III Sustainment Partnership which consists of support for the United Kingdom's fleet of six Boeing C-17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support.**

(iv) **Military Department: Air Force (QCX, Amd #2)**

(v) **Prior Related Cases, if any:**
FMS Case QCX-$19M-22Jan07
FMS Case QCX, Amd #1-$99M-30Oct07

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None.**

(viii) **Date Report Delivered to Congress:** APR 16 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

United Kingdom – Globemaster III Sustainment Partnership

The Government of the United Kingdom has requested continued participation in the USAF/Boeing Globemaster III Sustainment Partnership which consists of support for the United Kingdom's fleet of six Boeing C-17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $225 million.

The United Kingdom is a major political and economic power in NATO and a key democratic partner of the U.S. in ensuring peace and stability in this region and around the world.

This program will ensure the United Kingdom can effectively maintain its current force projection capability that enhances interoperability with U.S. forces. The United Kingdom is a staunch supporter of the U.S. in Iraq and Afghanistan, and the Global War On Terror (GWOT). The United Kingdom's troops are deployed in support of IRAQI FREEDOM and ENDURING FREEDOM, where U.S. assets currently provide this proposed capability.

The proposed sale of this equipment and support will not affect the basic military balance in the region. The United Kingdom will have no difficulty absorbing this capability into its armed forces.

The principal contractor will be: Boeing Company, of Long Beach, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–9146 Filed 4–28–08; 8:45 am]
BILLING CODE 5001–06–C

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Public Meeting and Hearing

DATE AND TIME: Wednesday, April 30, 2008, 10 a.m.—1 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: The Commissioners will consider the following items: Whether to modify Advisory Opinion 07–003–A regarding Maintenance of Effort (MOE) funding, pursuant to HAVA Section 254 (a)(7); whether to update the Michigan state instructions on the national voter registration form. Commissioners will receive a briefing regarding HAVA State Plans. Commissioners will hold a fact gathering hearing regarding Iowa's audit appeal, as part of the audit appeal process established by the Commission. The Commission will consider other administrative matters.

This Meeting Will Be Open to the Public

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

* * * * *

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E8–9279 Filed 4–28–08; 8:45 am]
BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Record of Decision and Floodplain Statement of Findings: Western Greenbrier Co-Production Demonstration Project, Rainelle, Greenbrier County, WV

AGENCY: Office of Fossil Energy, U.S. Department of Energy (DOE).

ACTION: Record of Decision (ROD) and Floodplain Statement of Findings.

SUMMARY: DOE has decided to implement the Proposed Action alternative, identified as the preferred alternative, in the *Western Greenbrier Co-Production Demonstration Project, Final Environmental Impact Statement* (DOE/EIS–0361; November 2007) (FEIS). That alternative is to provide approximately $107.5 million (up to 50% of the development costs) to Western Greenbrier Co-Generation, LLC (WGC) through a cooperative agreement under the Clean Coal Power Initiative (CCPI) Program for a Co-Production Facility to be located at Rainelle in Greenbrier County, West Virginia. This funding will be used by WGC to design, construct and demonstrate a 98 megawatt (net) power plant and cement manufacturing facility based on an innovative atmospheric-pressure circulating fluidized bed (CFB) boiler with a compact inverted cyclone to generate electricity and steam by burning approximately 3,000 to 4,000 tons per day of coal refuse from several local sites.

DOE considered two overall alternatives: To provide cost-shared funding or not to provide cost-shared funding to WGC's proposed project. In addition, DOE examined a range of implementing options for the power plant site, fuel supply, water supply, limestone supply, means of transportation, and transmission corridors. DOE analyzed in detail the environmental (including socioeconomic) impacts of each of these different options, as well as the economic and environmental benefits related to the reclamation and potential reuse of the coal refuse sites.

This ROD and Floodplain Statement of Findings have been prepared in accordance with the regulations of the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations [CFR] parts 1500–1508) for implementing the National Environmental Policy Act (NEPA), DOE's NEPA Implementing Procedures (10 CFR part 1021), and DOE's Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR part 1022).

ADDRESSES: The Final EIS is available on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/documentspub.html* and on the DOE National Energy Technology Laboratory (NETL) Web site at *http://www.netl.doe.gov*. This ROD and Floodplain Statement of Findings will be available on both Web sites in the near future. Copies of the Final EIS, this ROD and Floodplain Statement of Findings also may be requested by contacting Mr. Roy G. Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26505; telephone: 304–285–5460; or e-mail: *roy.spears@netl.doe.gov*.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the project or the EIS, contact Mr. Roy G. Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26505; telephone: 304–285–5460 or e-mail: *roy.spears@netl.doe.gov*. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103; telephone: 202–586–4600; or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION: DOE has prepared this ROD pursuant to CEQ regulations for implementing the procedural provisions of NEPA [40 CFR parts 1500–1508] and DOE NEPA regulations (10 CFR part 1021). This ROD is based on DOE's Final EIS and other program considerations.

Background and Purpose and Need for Agency Action

The promotion of America's energy security through reliable, clean, and affordable energy is one of the core components of DOE's mission to discover solutions to power and secure America's future. Coal is the most plentiful energy source in America today. Accordingly, DOE has strived to accelerate deployment of innovative clean coal technologies that can meet near-term energy and environmental goals, reduce risk in the business community to an acceptable level, and provide incentives to the private sector for innovative research and development directed at solving various energy supply problems. Since the early 1970s, DOE and its predecessor agencies have supported research and development programs that include long-term, high business-risk activities for the development of a wide variety of innovative coal technologies through the proof-of-concept stage. On November 5, 2001, the President signed the ''Department of the Interior and Related Agencies Appropriations Act, 2002,'' which established and appropriated initial funding for the CCPI Program (Pub. L. 107–63). Under this Initiative, DOE is required to promote the widespread commercial application of innovative technologies for more efficient and environmentally sustainable uses of coal by the power industry in the United States. This Initiative achieves that goal by co-funding proposed projects that DOE has selected through solicitation and negotiation.

DOE issued the first-round CCPI solicitation in March 2002 and received 36 proposals. The Western Greenbrier Co-Production Demonstration Project was one of eight projects selected in January 2003 for further consideration following a preliminary environmental review. The evaluation criteria that DOE used in the selection process included technical merit of the proposed technology, potential for a successful demonstration of the technology, potential for the technology to be commercialized, and environmental factors. In addition to demonstrating the first commercial application in the United States of a compact, inverted cyclone CFB design, which reduces size, steel requirements, costs and construction time, this project offers a novel approach to converting waste ash into commercial building products while also integrating power generation with remediation of coal refuse piles. A successful demonstration would generate technical, environmental, and financial data to confirm that similar integrated technologies can be implemented at the commercial scale.

EIS Process

On June 3, 2003, DOE published in the **Federal Register** (68 FR 33111) a Notice of Intent to prepare the EIS and to hold a public scoping meeting. DOE held the meeting in Charmco, West Virginia, on June 19, 2003. The public scoping period ended on July 3, 2003. DOE considered all of the comments received in preparing the Draft EIS.

On December 1, 2006, the Environmental Protection Agency (EPA) issued a Notice of Availability of the Draft EIS in the **Federal Register** (71 FR 69562) and DOE's Notice of Availability of the Draft EIS was published in the **Federal Register** on December 4, 2006 (71 FR 70371). DOE's Notice of Availability announced a public hearing on the Draft EIS and invited agencies,

organizations, and individuals to present oral and written comments.

DOE conducted a public hearing on the Draft EIS on January 4, 2007, in Crawley, West Virginia. An informational session was held prior to the hearing for the public to learn more about the proposed project. The public was encouraged to provide comments, either at the hearing or in writing, by January 18, 2007. Twenty people commented at the hearing and 179 people submitted written comments. DOE considered and responded to all public comments in the Final EIS.

In November 2007, DOE issued its Final EIS and the EPA published a Notice of Availability of the Final EIS in the **Federal Register** on November 9, 2007 (72 FR 63579).

Proposed Action

The Proposed Action is for DOE to provide WGC with approximately $107.5 million through a cooperative agreement under the CCPI Program for up to 50% of the cost for a Co-Production Facility, emphasizing a 98 megawatt (net) CFB that generates electricity and steam, to be located at Rainelle in Greenbrier County, West Virginia. The facility would be designed for long-term commercial operation (at least 20 years) following completion of the cooperative agreement. It is anticipated that DOE's share of project costs would be paid back over a 20-year period following the one-year demonstration period, based on a Repayment Agreement negotiated between DOE and WGC. The proposed power plant, which employs an inverted cyclone combustor, would require less steel than a plant configured with a conventional cyclone, reducing steel costs by approximately 40%. Because the boiler system is shorter and has a smaller footprint, it would take about 10% less time to construct than a conventional cyclone facility. WGC would obtain fuel for the power plant from the Anjean, Joe Knob, Donegan, and Green Valley coal refuse sites in the area for an initial period of 20 years. Before these fuel sources are depleted, WGC would identify additional coal refuse sites in accordance with West Virginia Department of Environmental Protection (WVDEP) clean-up priorities. Refuse coal removed from these sites would be beneficiated (washed or otherwise cleaned to increase the energy content by reducing the ash content) in a semi-mobile, relocatable, coal preparation plant. Heavy-haul trucks would transport the fuel on local roads to the power plant site. By processing the fuel near the coal refuse sites, WGC would substantially reduce the volume of truck traffic that otherwise would be generated by the project and also reduce fuel processing and handling activities on the power plant site.

The power plant would generate electricity for distribution on the national grid via a new transmission line and corridor. The power plant would also produce an alkaline ash from fuel combustion. WGC would return a portion of the ash to coal refuse piles to facilitate remediation and reclamation efforts at each of the coal refuse sites in accordance with agreements between WGC and the WVDEP. WGC would produce cement from the balance of the ash by combining it with limestone in a coal-fired rotary kiln associated with the power plant. In addition to electricity and cement, the planned plant would co-produce steam and would serve as the anchor tenant for a proposed, environmentally balanced industrial park (''EcoPark'') to be located on an adjacent property in Rainelle.

Alternatives

DOE pursues the goals of the CCPI Program by co-funding projects owned by non-Federal sponsors. As such, DOE has a more limited role than if the Federal government were the owner and operator of the projects. DOE evaluated CCPI Program applications to determine if they meet the CCPI Program's goals. It is appropriate for DOE to consider the applicant's needs and goals in determining the scope of the EIS (*i.e.*, identifying the range of reasonable alternatives).

Based on the foregoing principles, DOE has identified and analyzed two reasonable alternatives: (1) Provision by DOE of cost-shared funding for the WGC Project as proposed, subject to conditions (*e.g.* mitigations), and (2) a no-action alternative in which DOE would not provide funding for the project. Without funding, DOE assumes that the project would be cancelled.

DOE considered and dismissed from further review other alternatives that did not meet the goals and objectives of the CCPI Program. Commenters proposed additional alternatives such as encouraging energy efficiency rather than demonstrating a coal-fired power plant and employing high quality fuel rather than refuse fuel. DOE considered but dismissed these and similar alternatives from further analysis because they would not satisfy the Department's purpose and need.

DOE examined numerous implementing options for the power plant site, fuel supply, water supply, limestone supply, materials handling, transportation, and transmission corridor sites. For example, DOE examined three locations for the proposed power plant facility, each of which would change the configuration and size of the power plant footprint. One of the advantages of the inverted cyclone technology is that it reduces the plant footprint, and the resulting reduction of material and construction cost is relevant to DOE's decision to fund or not fund. DOE also examined four different coal refuse sites for fuel supply. These sites vary widely in size and distance from the plant site. DOE examined secondary and tertiary water supply options that would involve varying degrees of surface (river) water and groundwater. The implementing options, in some instances, have distinct environmental impacts. For example, one option for water supply would reduce streamflow in the Meadow River to a greater degree than the other option. The EIS analyzes in detail the environmental impacts of these different options.

After considering the range of reasonable implementing options, the potential environmental impacts, and all public comments, DOE concluded in the Final EIS that providing cost-shared funding for WGC's preferred configuration of options is DOE's Preferred Alternative.

Analysis of Environmental Impacts

Atmospheric conditions and air quality: In examining how the construction and operation of the WGC Co-Production Facility could impact air resources in the planning area, DOE reviewed the predictive air dispersion modeling, Class I and Class II Prevention of Significant Deterioration (PSD) analysis, and visibility modeling that were completed by WGC in support of the Permit to Construct, R14–0028, issued to WGC by WVDEP [1]. During construction of the Co-Production Facility and the associated coal preparation plant system, the potential sources of air emissions would be material handling and storage, soil excavation, diesel-fueled construction equipment, and construction worker vehicles. During operations, the potential sources of air emissions would be process equipment (including the CFB and kiln), material handling and storage, and vehicles. The majority of

[1] In accordance with the West Virginia Air Pollution Control Act (West Virginia Code §§ 22–5–1 *et seq.*), 45 CSR. 13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits and Procedures for Evaluation, and 45 CSR. 14—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.

these emissions would be exhaust from the combustor and kiln via a common stack during operations. The Co-Production Facility's emissions would be less than levels specified in the R14–0028 permit, which complies with New Source Performance Standards.

Each of the implementing options proposed by WGC would emit similar types and quantities of pollutants. Analyses in the EIS show that emissions of criteria pollutants, when combined with ambient background concentrations of pollutants, would comply with National Ambient Air Quality Standards (NAAQS). In addition, pursuant to the governing Permit R14–0028, the facility would be equipped with a Continuous Emission Monitoring System to ensure that NAAQS would not be exceeded.

To limit the rate at which increased emissions can occur in areas that attain air quality standards, PSD regulations include limits, or increments (''PSD increments''), that the proposed facilities classified as major sources must meet. PSD increments are the maximum allowable concentration increases above a baseline concentration. PSD increments applicable to the proposed project have been established for sulfur dioxide (SO_2), nitrogen dioxide (NO_2), and particulate matter (PM_{10}). The Co-Production Facility's emissions of these NAAQS pollutants, namely SO_2, NO_2 and PM_{10}, will contribute to PSD increments in the Class II areas (Class II areas are designated areas in which moderate deterioration, associated with well managed growth, is allowed) that surrounds the proposed WGC plant. These emissions, however, would contribute in a range between 25% and 75% of the allowable increment depending upon the pollutant and associated averaging time. The 24-hour PM_{10} emissions in the immediate vicinity of the site would be responsible for the greatest percentage of the PSD increment.

In response to public scoping comments and after consulting with WVDEP and Federal Land Managers, DOE analyzed potential impacts at the four nearest Class I areas (Class I areas are designated areas in which the degradation of air quality is to be severely restricted [*e.g.*, National Park or Wilderness Areas]). These Class I areas (and their distances from Rainelle) are: James River Wilderness Area (74 miles), Otter Creek Wilderness Area (89 miles), Dolly Sods Wilderness Area (102 miles), and Shenandoah National Park (105 miles). A visibility analysis, using methodology requested by Federal Land Managers responsible for the Class I areas, indicated that in the closest Class I areas there would likely be no more than 6 days over a 3-year period when there would be a 5% change in light extinction, and no days with greater than 10% light extinction (thresholds that Federal Land Managers use to determine potential significance). However, meteorological records suggest that these occurrences may be attributable to natural obscuring conditions (such as fog, clouds, and rain). The analyses indicate that, even without accounting for naturally obscuring periods, concentrations of all the criteria pollutants emitted from the Co-Production Facility would have an insignificant impact at the nearest Class I Areas.

As a fossil fuel-fired steam electric power plant, the CFB would be among the 28 named source categories listed in section 169 of the Clean Air Act as a major source that has the potential to emit a regulated air pollutant (or precursor) or a hazardous air pollutant in quantities equal to or exceeding listed thresholds. For emissions that could be above a threshold, a Best Available Control Technology (BACT) analysis was conducted by WGC as part of the permitting process. This analysis resulted in the selection of the following emission control technologies:

- Nitrogen Oxides (NO_X)—Selective Non-Catalytic Reduction from the combined flow of the CFB and Kiln.
- Carbon Monoxide (CO) and Volatile Organic Compounds (VOCs)—A combination of temperature profile, residence time, turbulence, and excess air levels for controlling CO and VOC emission rates from the combined flow of the CFB/Kiln.
- SO_2—Limestone injection into the CFB for controlling SO_2 emissions from the CFB, and use of a flash dryer absorber for the CFB/Kiln.
- Sulfuric Acid (H_2SO_4)—Limestone injection into the CFB for controlling SO_2 emissions from the CFB, and use of a flash dryer absorber for the CFB/Kiln.
- Particulate matter (PM)—Use of a baghouse for controlling PM emission rates from the combined flow of the CFB/ Kiln.

DOE independently reviewed the BACT analysis that WGC conducted to determine how WGC would control emissions of NO_X, CO, VOC, SO_2, H_2SO_4, and PM. In addition, in May 2006, the Sierra Club (West Virginia Chapter), West Virginia Highlands Conservancy, and Greenbrier River Watershed Association filed an appeal with the West Virginia Air Quality Board (AQB), challenging WVDEP's issuance of the air permit. The final order for this appeal was issued on February 28, 2007. In it, the AQB affirmed the WVDEP's issuance of the air permit to WGC. According to the final order, the AQB concluded that WGC appropriately conducted the BACT analysis, and WVDEP complied with procedural requirements in accordance with the applicable laws and regulations.

WGC's planned extraction and processing of coal refuse would emit fugitive dust and WGC would contain these emissions within site boundaries through the use of dust suppression activities in accordance with the West Virginia Code of State Rules (CSR) 38 CSR 2 and 45 CSR 5. WGC would construct and operate the preparation plant in accordance with a WVDEP Class II General Permit G10–C for coal preparation plants and coal handling operations. WVDEP would issue the permit in accordance with 45 CSR 13.

Based on test burn analysis conducted for WGC's PSD Permit Application, WGC and DOE concluded that the Co-Production Facility would emit a maximum of 0.014 tons of mercury per year, which is significantly less than the 200 pound (0.1 ton) per year threshold listed in 45 CSR 13. The plant is not anticipated to discharge objectionable odors as regulated by 45 CSR 4.

Analysis based on the Seasonal/ Annual Cooling Tower Impact model, developed by the Electric Power Research Institute, demonstrated that the cooling tower proposed for the WGC project would not lead to excess fogging, rime ice deposition, plume shadowing, loss of solar energy, or salt and water deposition. The analysis shows that the cooling tower would have minimal adverse air impacts on neighboring properties.

Under the Acid Rain Program established by Title IV of the Clean Air Act, utility generating units greater than 25 MW are required to obtain a Phase II Acid Rain Permit from EPA, under which they cannot emit more tons of SO_2 than held in marketable allowances. The proposed Co-Production Facility would have to obtain and comply with such a permit and would be operated in a manner that is consistent with EPA's overall efforts to reduce SO_2 emissions.

CO_2 Emissions: The Intergovernmental Panel on Climate Change, in its Fourth Assessment Report, [2] stated that warming of the earth's climate system is unequivocal, and that warming is very likely due to anthropogenic greenhouse gas (GHG)

[2] Intergovermental Panel on Climate Change, Fourth Assessment Report, Climate Change 2007: Synthesis Report, Summary for Policy Makers, released in Valencia, Spain, November 17, 2007.

concentrations. Emissions of the GHG, CO_2, from the proposed project (including activities at the coal refuse and preparation plant sites and related trucking activities) would be approximately 0.87 million tons per year (0.79 million metric tons). Emissions of CO_2 resulting from global fossil fuel combustion are estimated to have averaged 28 billion tons (26 billion metric tons) per year during the period 2000 to 2005.[3] Over the 50-year duration of expected commercial operation, the proposed project could release approximately 44 million tons (40 metric tons) of CO_2. DOE is not aware of any methodology to correlate the CO_2 emissions exclusively from the proposed project to any specific impact on global warming; however, studies such as the IPCC report support the premise that CO_2 emissions from the proposed project, together with global GHG emissions, will very likely have a cumulative impact on global warming.

Although not proposed by the applicant, DOE has considered potential measures to mitigate impacts on global climate change by using geologic sequestration to reduce emissions of CO_2. DOE determined that geologic sequestration is not reasonable for this project. Unlike plants that use integrated gasification combined cycle technology and produce a capturable stream of high-pressure CO_2 in the pre-combustion gasification stage, the proposed project will use a circulating fluidized bed system, and only emit a post-combustion, low pressure, diluted CO_2 stream in the flue gas. Currently, there is no economically viable technology that can capture diluted CO_2 in this low pressure stream. In order to raise its CO_2 to a pressure high enough for capture, the plant would need to use pressurization equipment that would consume so much energy and be so prohibitively expensive to operate that the plant would be economically infeasible.[4]

In the future, cost-effective energy efficient technology may be available to capture the type of low-pressured CO_2 stream that a CFB plant emits. DOE has established a 2020 goal for the commercial scale operation of large scale plants that can select from a suite of technologies (currently in a conceptual phase) to capture up to 90% of CO_2 emissions and store it with 99% storage permanence (meaning that at most 1% of the stored CO_2 might leak out) at less than a 10% increase in the cost of energy services. At present, however, because CO_2 capture and subsequent sequestration is not a feasible option for the proposed project, DOE is not requiring specific mitigation measures to reduce CO_2 emissions.

Surface Water: As required by a National Pollutant Discharge Elimination System General Construction Permit, WGC would minimize impacts from discharge of pollutants and storm water on surface waters during construction by implementing an erosion and sedimentation control plan. WGC would implement a storm water management pollution prevention plan and a groundwater protection plan based on West Virginia Department of Transportation and WVDEP requirements, thereby minimizing impacts on surface water during operation of the plant.

WGC intends to use effluent from the Rainelle Sewage Treatment Plant as the primary source of process water for the facilities. WGC proposed two implementing options to provide supplemental sources of process water. Under the first option, WGC would withdraw groundwater as a secondary source of water supply and withdraw surface water from the Meadow River as a tertiary supply. The plant would withdraw water from the Meadow River intermittently, only during low aquifer conditions. WGC estimates that the Meadow River's streamflow would be reduced by a maximum of approximately 1.6 to 2.0 cubic feet per second (cfs) at the end of a 25-year period. Under the second implementing option, WGC would withdraw from the Meadow River as a secondary source of water supply. This might reduce base river flows, but the plant would stop withdrawing river water when flows could fall below 60% of the annually or seasonally adjusted average flow. The West Virginia Division of Natural Resources has provided base flow thresholds to be maintained in the Meadow River: 178 cfs April through September and 118 cfs October through March. A flow monitoring system would be implemented to alert operators or inspectors when the flows are at or approaching the thresholds. WGC personnel are responsible for the monitoring. WGC will install an electronic monitoring device with a ''low flow'' alarm, which will provide constant river flow information.

Under DOE's preferred alternative, DOE would fund the plant only if it employs surface water as a secondary source and groundwater as a tertiary source (*i.e.*, operates under the second implementing option). During periods when the plant does not use groundwater for water supply, the local aquifer would recharge and replenish itself. According to the widely used Tenant Method and the West Virginia Division of Natural Resources' recently determined base flow thresholds, the WGC plant's withdrawal of river water will leave the water flow high enough to sustain survival of stream habitat. Based on the West Virginia Division of Natural Resources' guidelines, the maximum that WGC would be allowed to withdraw from the river is 2.7 cfs, which represents less than 1% of Meadow River's average annual flow. Withdrawal from the river would be limited to high flow conditions. The WGC plant would reduce streamflow by a maximum of approximately 0.8 cfs at the end of a 25-year period.

Floodplains: All of the power plant siting options would unavoidably impact the floodplain of Sewell Creek. The preferred option would have the least impact on the floodplain, requiring 16 acres to be filled, resulting in a maximum increase in water elevation for a 100-year flood of 0.48 ft. The other two (non-preferred) options would require up to 20 acres to be filled, resulting in a maximum increase in water elevation for a 100-year flood of up to 0.67 ft. These potential increases in the 100-year flood elevations for Sewell Creek would be less than the Federal Emergency Management Agency (FEMA) designated maximum height of 1 ft in the local upstream area. No component of the Proposed Action would impact floodplains at coal refuse sites, limestone supply quarries, or power transmission facilities associated with the proposed project.

Biological Resources (Including Wetlands): The power plant site has lost most of its original ecological resource value as a result of prior land-disturbing activity. Extensive adjacent acreage of undisturbed upland areas offer higher quality habitat. DOE determined that the project is not expected to impact any protected species. The U.S. Fish and Wildlife Service reviewed DOE's habitat assessment report and surveys and confirmed that no federally-listed threatened and endangered species were found in the vicinity of the proposed project, and determined that no further consultation is required under Section 7 of the Endangered Species Act for DOE's preferred alternative.

The preferred power plant siting option would impact approximately 0.26 acres of wetlands. The non-preferred power plant options would encroach into significant areas of wetlands and require filling of a

[3] Energy Information Agency, *http://www.eia.doe.gov/pub/international/iealf//tablehlco2.xls.*

[4] For information on the status of various capture technologies, see *http://www.netl.doe.gov/technolgoies/carbon_seq/FAQs/tech-status.html.*

meander bend of Sewell Creek. In addition, construction and operation of the proposed transmission line corridor could impact approximately three acres of wetlands. With respect to the proposed transmission line corridor, most of the wetlands impacts would be temporary and the areas would be restored to their pre-existing conditions when construction activities end. Over time, restored wetlands would develop a similar or greater functional capacity compared to pre-disturbance conditions. However, impacts to approximately 0.38 acres of forested wetlands would result in a permanent habitat conversion and a change in wetlands function because post-construction corridor maintenance would result in a scrub-shrub cover type and prevent transitioning into a forested cover type. WGC has submitted a revised wetlands permit application to WVDEP and the U.S. Army Corps of Engineers (USACE). The 0.26 acres of wetlands impacted by the preferred option, or larger acreage impacted by the non-preferred options, in addition to the approximately three acres of wetlands impacted within the transmission line corridor would result in a cumulative wetland impact that exceeds 0.5 acres, and thus necessitated WGC's submission of an Individual Permit application. Both state Section 401 and Federal Section 404 wetlands permit applications discuss temporary and permanent wetlands impacts and best management practices (BMPs), and include a compensatory conceptual wetlands mitigation plan for impacted wetlands. The conceptual wetlands replacement design would be finalized once WVDEP approves the plan. The USACE has decided to evaluate the WVDEP's response regarding compensatory wetlands replacement design before it would issue a jurisdictional determination on wetlands delineated by WGC. The Floodplain Statement of Findings in this ROD (below) contains further information about potential floodplain and wetlands impacts.

Geology and Groundwater: DOE's groundwater modeling demonstrated that both of the implementing options considered for pumping water from the local aquifer were feasible and would not cause unacceptable levels of drawdown. These implementing options are described in greater detail under *Surface Water*. The Rainelle Water Department separately indicated that the two city wells would be able to safely meet the city water demand under both implementing options.

In response to concerns expressed by members of the public during the EIS process about potential impacts on groundwater resulting from leaching of metals in the CFB ash proposed to be used for coal refuse remediation, DOE has conducted a further examination, including a review of case studies. Based on its review, DOE has concluded that CFB ash can be used to remediate coal refuse sites in a manner that does not degrade groundwater resources by leaching of arsenic or other metals. Remedial plans would govern the potential leaching of metals in the context of local conditions at the coal refuse site (*e.g.*, geology and hydrology). The potential for mobilizing arsenic and other metals would be carefully evaluated as part of the remediation planning efforts overseen by WVDEP, who would direct and supervise the development and implementation of the site-specific reclamation plans. DOE will require that WGC develop plans in a manner that not only is protective of groundwater and surface water resources, but would potentially have a long-term beneficial impact to water resources.

Cultural Resources: None of the project components associated with the Proposed Action would occur on, or otherwise affect, federally-recognized Native American tribal lands. The West Virginia State Historic Preservation Office (WV SHPO) concurred with the conclusion of a Phase I survey that none of the WGC implementing options for the proposed project would have an effect on any archaeological resources that might exist at the plant site. To date, no other cultural, historic or archaeological resource impacts have been identified at the sites associated with this project. In general, these sites have been extensively disturbed by previous mining-related operations and, as such, DOE does not expect that archaeological resources will be present in the vicinity of the proposed project. DOE conducted and submitted an additional Phase I survey to the WV SHPO in November, 2007, following further refinements to the proposed transmission corridor and water supply facilities. No prehistoric or historic archeological materials were reported in the survey; however, DOE anticipates WV SHPO's comments on the report in the near future and will continue consultation with the WV SHPO in accordance with the National Historic Preservation Act Section 106 review process.

Socioeconomics: DOE determined that socioeconomic impacts would be predominately beneficial. Construction and operation of the power plant would increase local employment opportunities and provide economic stimulus to area businesses without displacing existing residents or businesses or adversely affecting current trends in population growth and the demand for housing. During construction, the project would likely employ an average of 185 individuals per month over a 29-month period. During the demonstration phase and subsequent commercial operation, the proposed project would employ approximately 126 full-time personnel and would result in approximately 114 new jobs from economic activity triggered by the proposed project. However, due to their close proximity to the proposed power plant, residential properties to the east of and within 1,500 feet of the plant site could decline in value because of temporary impacts to aesthetics, noise, dust emissions, and traffic during construction, and long-term impacts to aesthetics and noise during operations.

Environmental Justice: DOE determined that the proposed power plant would not have a disproportionately high and adverse impact on minority or low-income populations. DOE did not identify any minority populations in the potentially affected area. The proportion of minorities in the region affected by the power plant site is substantially below 50%, and is not meaningfully greater than the proportion of minorities in the larger local jurisdictions, county, and state. DOE did, however, identify low-income populations. The general population of western Greenbrier County represents a ''low-income population.'' In comparison to the state and county, local communities in the proposed project area have relatively large low-income populations. However, the EIS analyses show that there will be no significant impacts on any populations, and DOE has concluded that impacts on low-income populations would not be disproportionately high and adverse.

Land Use: WGC would develop the proposed project on disturbed land near areas that have historically been used for industrial activities. Potential business opportunities arising from the proposed project could cause land uses surrounding the power plant to change. The three communities sponsoring the project envision the development of the EcoPark industrial park on adjoining vacant land that was previously designated for such use but has not been developed. Once WGC has completed its reclamation work at the degraded coal refuse sites, these sites might be suitable for other uses beneficial to the local communities, county, and state. The development of a transmission line corridor right-of-way would require the

clearing of a 206-acre corridor. The route would not traverse populated land areas, and would not cross any parks, trails, or byways. Many of the properties that would be traversed by the new corridor are owned by timber companies that would likely clear-cut the properties prior to WGC's construction of the power line. WGC would compensate landowners for granting an easement.

Community Services and Utilities: Because the local population has been declining since the 2000 census, currently available public services are adequate for Rainelle. Based on community response to the proposed project, DOE expects that most of the construction workers would be hired locally. The operation of the proposed facility may attract up to 100 employees from larger communities just outside of Rainelle (*e.g.*, Lewisburg). Thus, DOE anticipates that the proposed power plant would not impose excessive demands on community services and utility systems during construction and operation, and the project would not induce unsupportable development. Construction activities and anticipated injuries may increase the short-term demand on medical services.

Traffic and Transportation: DOE determined that existing roadways could accommodate the additional traffic volumes during construction and operation of the proposed power plant. The trucking of fuels, limestone, and other materials would not cause delays beyond level of service ''C'' at any of the intersections studied because it would occur on designated heavy haul routes (''C'' represents stable traffic flow; levels beyond ''C'' (*i.e.*, levels of service ''D'' through ''F''), signify higher density of traffic flow and increasing degradation of roadway capacity). However, heavy-haul trucks would likely increase travel times on some local roads between the preparation plant sites and the power plant site.

Public Health and Safety: DOE anticipates that worker safety impacts would track normal Bureau of Labor Statistics for the construction and operation of the power plant, activities at the coal refuse and preparation plant sites, and trucking of fuel and limestone. Worker safety at the proposed facilities would be subject to Occupational Safety and Health Administration standards.

EIS analyses show that carcinogenic and non-carcinogenic risks to members of the public from routine plant releases would be insignificant.

Aqueous ammonia would be stored at the power plant to reduce NO_X emissions. A sudden release of aqueous ammonia (whether accidental or caused by an act of sabotage or terrorism) could present a health hazard to people within a 600-ft radius of the power plant; however, there are only two residential properties within the 600-ft radius and WGC plans to purchase these properties. Thereafter, there would be no residents living within the 600-ft radius. On-site workers are present within a 300-ft radius, such that they could be affected in the event of a release.

Noise: DOE anticipates that the majority of adverse impacts during plant construction, including blasting noise and vibration, would only impact those residential properties located within 1,500 ft east of the plant site and would be temporary and intermittent. Some short-term, intermittent daytime noise impacts would occur during construction activities at other areas associated with the proposed project. In accordance with noise requirements as regulated by the West Virginia Public Service Commission, WGC would incorporate noise attenuation and mitigation measures into the final design that would ensure operational noise levels would remain below a threshold level at each identified receptor site above which noise monitoring would otherwise be required by the Public Service Commission. Nonetheless, to ensure compliance, WGC would monitor noise levels during plant operations. Noise from steam blow-off sources would be temporary and infrequent, occurring only during start-up and maintenance operations. Coal refuse sites and candidate preparation plant sites are located in remote, sparsely populated areas where there has been or still are coal mining activities. Commercial operations at limestone quarries would not change appreciably from baseline conditions. DOE estimates that traffic-related noise during construction and operation will fall below Federal and state impact criteria.

Cumulative Impacts: Other than commercial activities by private sponsors, there are no known major projects planned by Federal, state, county, or municipal authorities in the WGC area. The principal commercial activities in the planning area include the following: ongoing timber harvesting activities (clear cutting) in the vicinity of the proposed project; ongoing and future surface coal mining and preparation operations at and near the Green Valley and Anjean sites; a proposed wind power generating facility to be located north of the proposed project area by Invenergy Wind, LLC; and the planned EcoPark industrial development to be located adjacent to the WGC plant site. Greenbrier Valley Economic Development Corporation plans to develop the EcoPark on approximately 26 acres of land on the former site of the Meadow River Lumber Company located directly northwest of the WGC plant site across Sewell Creek. The proposed plant would support the EcoPark by providing electricity, steam, and hot water and by producing cement in a kiln for use in the manufacture of construction materials by potential tenants. The EcoPark may include a facility for the production of building products using cement from the kiln, a facility to produce farm-raised tilapia fish, and a commercial greenhouse operation. DOE did not identify significant adverse cumulative impacts resulting from the proposed project.

Environmentally Preferred Alternative

DOE has identified the no-action alternative as environmentally preferred. Under the no-action alternative, DOE would not provide cost-shared funding for the proposed project and the project would not be completed. Without the project as a stimulus and anchor, it is doubtful that the planned EcoPark would attract potential tenants. If the project is not constructed, baseline conditions would remain unchanged. No site preparation (grading, clearing of trees and other vegetation) would occur, no employment or transportation of construction workers and operators would occur, coal refuse would not be removed, and no discharges, emissions, or solid wastes would be produced. Hence, DOE would anticipate that no adverse impacts would occur other than adverse impacts from existing conditions. Biological conditions at the coal refuse sites would remain unchanged but any offsetting benefits associated with land reclamation and acid mine water remediation would not be realized. Socioeconomic conditions would remain unchanged, however given the current reduced state of the local economy, employment, and income, the area would lose the potential for stimulus to prevent further decline. Long term environmental benefits (*e.g.* reclamation of old coal refuse piles, reduction in acid mine drainage) that would be expected from project actions would not be provided under the no-action alternative.

Comments Received on the Final EIS

DOE received comments on the Final EIS from EPA, Region III, Environmental Programs Branch, Philadelphia, Pennsylvania, and from the Appalachian Center for the Economy and the Environment (ACEE), Mathias,

West Virginia (on behalf of ACEE and the West Virginia Highlands Conservancy).

EPA stated that on January 17, 2007, they had provided comments on the Draft EIS, that DOE responded to those comments in the Final EIS, and that EPA has no further concerns. EPA further recognized ''the growing concerns with CO_2 emissions from coal-fired power plants and Climate Change. Through a number of initiatives, the Federal government, partnerships and programs continue to investigate opportunities to conserve fossil fuels, improve energy efficiency'' * * * and it was their expectation that: ''The DOE Clean Coal Power Initiative will further promote these national goals.''

Comments provided by the ACEE were substantially identical to comments on the Draft EIS previously submitted by ACEE on January 17, 2007, and were addressed in Volume 3 of the Final EIS, ''Comments and Responses on the Draft Environmental Impact Statement.'' Nevertheless, DOE reviewed the comments to ensure that the Final EIS adequately addressed the areas of expressed concern. In the Final EIS, DOE provides further information about the areas of expressed concern. For example, as discussed in the Final EIS, to address concerns expressed about potential impacts on surface and groundwater, DOE conducted new aquifer tests that confirm results of earlier studies. DOE also modified its preferred alternative regarding water use as requested by WVDEP to ensure protection of the Meadow River. In addition, the Final EIS contains additional information about the fuel supply sites and potential associated impacts, and responds to other issues raised by ACEE.

Decision

DOE has decided to provide approximately $107.5 million (representing up to 50% of the development costs) to WGC through a cooperative agreement under the CCPI Program for a Co-Production Facility to be located at Rainelle in Greenbrier County, West Virginia. This funding will be used by WGC to support the design, construction and demonstration of a 98-megawatt (net) power plant and cement manufacturing facility based on an innovative atmospheric-pressure CFB boiler with a compact inverted-cyclone to generate electricity and steam by burning approximately 3,000 to 4,000 tons per day of coal refuse from several local sites. This action is identified as the preferred alternative in the ''Western Greenbrier Co-Production Demonstration Project, Final Environmental Impact Statement'' (DOE/EIS–0361) issued in November 2007.

Basis for Decision

This decision is based on the information contained in the Final EIS and other program considerations. In arriving at its decision, DOE noted the potential for substantial economic benefits to the local community and environmental benefits related to the reclamation and potential reuse of coal refuse sites. Based on the analysis in the Final EIS and the mitigation commitments enforced through the cooperative agreement with WGC, DOE expects that the project will be implemented in an environmentally responsible manner. DOE has concluded that the project will meet DOE's objectives under the CCPI Program by generating technical, environmental, and financial data needed to confirm that similar integrated technologies could be implemented at the commercial scale.

Mitigation

DOE's decision was made after careful review of the potential environmental impacts, presented in the EIS, and incorporates as mitigation measures and BMPs all practicable means to avoid or minimize environmental harm. WGC will implement all of the mitigation measures and BMPs listed in Table 4.19–1 in Section 4.19 (Volume 1) of the EIS, and in the Floodplain and Wetlands Assessment, Appendix M (Volume 2) of the EIS. DOE will verify the environmental impacts predicted in the EIS and the implementation of appropriate avoidance and mitigation measures through an Environmental Monitoring Plan, which will be developed as a requirement of DOE's cooperative agreement with WGC. After consideration of engineering and site evaluation and planning measures, compliance with environmental requirements, and application of BMPs, WGC also may implement further mitigation measures. In addition, WGC will comply with state and Federal wetlands permits, which may require additional mitigation, such as compensatory wetlands replacement.

As stated above, CO_2 capture and subsequent sequestration is not a viable option for the project; therefore, DOE is not requiring such measures to reduce CO_2 emissions. Although not viewed as a mitigation action, WGC plans to use waste heat from the Co-Production Facility in the planned EcoPark, which would off-set CO_2 emissions that might otherwise be associated with producing energy from the facility.

DOE has prepared a Mitigation Action Plan, in accordance with Section 1021.331(a) of the DOE NEPA regulations, to describe how mitigation measures will be planned and implemented.

Floodplain Statement of Findings

DOE included a Floodplain and Wetland Assessment as Appendix M in Volume 2 of the Final EIS. The assessment and these findings have been prepared in accordance with DOE's regulations ''Compliance with Floodplain and Wetland Environmental Review Requirements,'' 10 CFR Part 1022. Portions of the proposed site for the Co-Production Facility unavoidably fall within a 100-year floodplain. A map of the floodplain is shown in Figure 2.2 of Appendix M in Volume 2 of the Final EIS. DOE concluded that the activities associated with the construction and operation of the proposed Co-Production Facility do not involve critical actions (*e.g.*, storage of highly volatile, toxic, or water-reactive materials), which would present unacceptable risks even if there is a slight chance of flooding and would require a 500-year floodplain evaluation. DOE has concluded that there are no practicable alternatives to some construction in floodplains, and consistent with 10 CFR Part 1022, WGC will design or modify actions to minimize potential harm to floodplains and wetlands.

DOE determined that all practicable power plant site layout options would cross into floodplain and wetland areas. DOE evaluated three implementing options including the preferred site layout by WGC. Under each option the power plant site would be graded to rise about 20 feet so that the base elevation would be above the 100-year floodplain elevation. Up to 20 acres of floodplains could be permanently lost (for the preferred site layout, approximately 16 acres of floodplains would be filled). This means that the proposed project will affect a very small area of floodplain, and none of the siting options would result in changes in surface water elevations that would exceed the FEMA designated height of one foot for the 100-year flood event as demonstrated by predictive modeling conducted by DOE. Based on the changes from the layout options proposed by WGC in the water surface elevations, only minor changes are expected for the predicted 100-year flood boundary, with little potential impact to upstream or downstream structures over baseline conditions. Potentially disturbed areas will be restored by WGC to their original grade,

where feasible, and planted with native vegetation. WGC will implement BMPs to minimize adverse environmental impacts during construction of road crossings. WGC has prepared and submitted a Federal Section 404 Authorization permit for water resources impacts, including wetlands impacts, and a State Section 401 permit under the Clean Water Act issued by USACE and WVDEP, respectively. DOE estimated that 0.26 acre of wetlands will be potentially impacted at the proposed power plant site by service roads, stockpile areas, and water supply lines.

Under one option a cooling water intake structure, pump house, and pipeline would be used to withdraw water from Meadow River. WGC is currently looking at the best locations for these facilities to minimize disturbance of wetlands and floodplains. Prior to construction of a permanent intake structure WGC must obtain a Section 404 Authorization permit from the USACE and Section 401 permit from the WVDEP. The Section 404 Authorization permit is required as a result of water resources impacts, including wetlands impacts. The Water Quality 401 Certification is required to ensure that the project will not violate the state's water quality standards or stream designated uses. Depending upon the final plant design and location of the water supply line from the sewage treatment plant, up to one additional acre of wetlands and 120 linear feet ''waters of the U.S.'' could be impacted. WGC is in the process of consulting with the USACE concerning the wetland permitting process to identify wetland impacts and methods for avoiding and minimizing impacts and developing suitable forms of wetland mitigation.

Under all options for the transmission line corridor from the proposed WGC power plant to the Grassy Falls substation, construction activities would be temporary and localized and would not result in permanent impacts to existing 100-year floodplains. Where the transmission line corridor would cross a stream, new power line poles would be situated at maximum distances so as to not obstruct flood flows. Construction and operation of the transmission line could impact approximately three acres of wetlands, of which 0.38 acres could be permanently impacted as discussed above in *Biological Resources*.

No floodplain or wetland impacts are expected as a result of the fuel recovery efforts that would occur at the Anjean, Donegan, Green Valley, and Joe Knob coal refuse sites to be used for fuel supply to the project.

Any structures located within the floodplain would be designed in accordance with the National Flood Insurance Program (NFIP) requirements for nonresidential buildings and structures located in special flood hazard areas. The NFIP regulations require vulnerable structures to be constructed above the 100-year flood elevation or to be watertight. In accordance with 10 CFR part 1022, DOE will ensure through the cooperative agreement that WGC implements measures to mitigate the adverse impacts of actions in a floodplain or wetlands, including but not limited to, minimum grading requirements, runoff controls, design and construction constraints. Whenever possible, WGC will avoid disturbing floodplains and wetlands and will minimize impacts to the extent practicable, if avoidance is not possible. Impacts to floodplains and wetlands will be minimized through the implementation of engineering design standards and BMPs (as described above under Mitigation, these measures are contained in Appendix M (Volume 2) of the EIS). In addition, WGC will comply with state and Federal wetlands permits, which may require additional mitigation as well as compensatory wetland replacement.

Issued in Washington, DC, on this 23rd day of April, 2008.

James A. Slutz,

Acting Principal Deputy Assistant Secretary, Office of Fossil Energy.

[FR Doc. E8–9329 Filed 4–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864–079–MI & WI]

Upper Peninsula Power Company; Notice of Availability of Environmental Assessment

April 22, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the proposed lake level amendment for the bond Falls Project, located in the Ontonagon River Basin in Ontonagon and Gogebic Counties, Michigan and Vilas County, Wisconsin, and has prepared a Draft Environmental Assessment (Draft EA).

A copy of the Draft EA is on file with the Commission and is available for public inspection. The Draft EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–1864) 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.

Any comments should be filed by May 27, 2008, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–1864) on all comments. Comments may be filed electronically via 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 under the ''eFiling'' link. For further information, contact Monica Maynard at (202) 502–6013.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9298 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003; RT01–86–000, RT01–86–001 and RT01–86–002; RT01–95–000, RT01–95–001 and RT01–95–002; RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003; RT01–98–000; RT02–3–000]

Regional Transmission Organizations; Bangor Hydro-Electric Company, et al.; New York Independent System Operator, Inc., et al.; PJM Interconnection, L.L.C., et al.; PJM Interconnection, L.L.C.; ISO New England, Inc.; New York Independent System Operator, Inc.; Notice of Filing

April 21, 2008.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet Web sites information updating their progress on the resolution of RTO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments

should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 13, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9300 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–56–000]

New Brunswick Power Transmission Corp., New Brunswick System Operator, Northern Maine Independent System Administrator, Inc., Complainants v. ISO New England, Inc., Respondent; Notice of Complaint

April 21, 2008.

Take notice that on April 18, 2008, New Brunswick Power Transmission Corporation, New Brunswick System Operator, and Northern Maine Independent System Administrator, Inc. (collectively, Complainants), pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e, and Rule 206 of Practice and Procedures of the Commission's regulations, 18 CFR 385.206, hereby file this complaint against ISO New England, Inc. (ISO–NE). Complainants state that this complaint is in response to the ISO–NE unilateral decision to arbitrarily limit the transfer capabilities at the New Brunswick/New England external interface, which, for the reasons set forth in the complaint, is unjust, unreasonable and unduly discriminatory.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9301 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No: PL07–2–000]

Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity; Policy Statement

Issued April 17, 2008.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On July 19, 2007, the Commission issued a proposed policy statement concerning the composition of the proxy groups used to determine gas and oil pipelines' return on equity (ROE) under the Discounted Cash Flow (DCF) model.[1] Historically, in determining the proxy group, the Commission required that pipeline operations constitute a high proportion of the business of any firm included in the proxy group. However, in recent years, there have been fewer gas pipeline corporations that meet that standard, in part because of the greater trend toward Master Limited Partnerships (MLPs) in the gas pipeline industry. Additionally, there are no oil corporations available for use in the oil pipeline proxy group. These trends have made the MLP issue one of particular concern to the Commission and are the reason that the Commission issued the Proposed Policy Statement.[2]

2. After review of an extensive record developed in this proceeding, the Commission concludes: (1) MLPs should be included in the ROE proxy group for both oil and gas pipelines; (2) there should be no cap on the level of distributions included in the Commission's current DCF methodology; (3) the Institutional Brokers Estimated System (IBES) forecasts should remain the basis for the short-term growth forecast used in the DCF calculation; (4) there should be an adjustment to the long-term growth rate used to calculate the equity cost of capital for an MLP; and (5) there should be no modification to the current respective two-thirds and one-third weightings of the short- and long-term growth factors. Moreover, the Commission will not explore other methods for determining a pipeline's equity cost of capital at this time. The Commission also concludes that this Policy Statement should govern all gas and oil rate proceedings involving the establishment of ROE that are now pending before the Commission, whether at hearing or in a decisional phase at the Commission.

I. Background

A. The DCF Model

3. The Supreme Court has stated that ''the return to the equity owner should be commensurate with the return on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'' [3] Since the 1980s, the Commission has used the DCF model to develop a range of returns earned on investments in companies with corresponding risks for purposes of determining the ROE to be awarded natural gas and oil pipelines.

4. The DCF model was originally developed as a method for investors to estimate the value of securities, including common stocks. It is based on

[1] *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity,* 120 FERC ¶ 61,068 (2007) (Proposed Policy Statement).

[2] After an initial round of comments and reply comments, the Commission concluded that it required additional comment on the issue of the growth rates of MLPs. After notice to this effect and the receipt of a round of initial and reply comments, staff held a technical conference involving an eight member panel on January 23, 2008 that was transcribed for the record. Comments and reply comments were filed thereafter.

[3] *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591 (1944). *Bluefield Water Works & Improvement Co.* v. *Public Service Comm'n,* 262 U.S. 679 (1923).

the premise that ''a stock's price is equal to the present value of the infinite stream of expected dividends discounted at a market rate commensurate with the stock's risk.'' [4] With simplifying assumptions, the DCF model results in the investor using the following formula to determine share price:

$$P = D/(r-g)$$

where P is the price of the stock at the relevant time, D is the current dividend, r is the discount rate or rate of return, and g is the expected constant growth in dividend income to be reflected in capital appreciation.[5]

5. Unlike investors, the Commission uses the DCF model to determine the ROE (the ''r'' component) to be included in the pipeline's rates, rather than to estimate a stock's value. Therefore, the Commission solves the DCF formula for the discount rate, which represents the rate of return that an investor requires in order to invest in a firm. Under the resulting DCF formula, ROE equals current dividend yield (dividends divided by share price) plus the projected future growth rate of dividends:

$$r = D/P + g$$

6. Over the years, the Commission has standardized the inputs to the DCF formula as applied to interstate gas and oil pipelines. The Commission averages short-term and long-term growth estimates in determining the constant growth of dividends (referred to as the two-step procedure). Security analysts' five-year forecasts for each company in the proxy group (discussed below), as published by IBES, are used for determining growth for the short term. The long-term growth is based on forecasts of long-term growth of the economy as a whole,[6] as reflected in the Gross Domestic Product (GDP which are drawn from three different sources.[7] The short-term forecast receives a two-thirds weighting and the long-term forecast receives a one-third weighting in calculating the growth rate in the DCF model.[8]

7. Most gas pipelines are wholly-owned subsidiaries and their common stocks are not publicly traded. This is also true for some jurisdictional oil pipelines. Therefore, the Commission must use a proxy group of publicly traded firms with corresponding risks to set a range of reasonable returns for both natural gas and oil pipelines. For both oil and gas pipelines, after defining the zone of reasonableness through development of the appropriate proxy group for the pipeline, the Commission assigns the pipeline a rate within that range or zone, to reflect specific risks of that pipeline as compared to the proxy group companies.[9] The Commission has historically presumed that existing pipelines fall within a broad range of average risk. A pipeline or other litigating party has to show highly unusual circumstances that indicate anomalously high or low risk as compared to other pipelines to overcome the presumption.[10]

8. The Commission historically required that each company included in the proxy group satisfy the following three standards.[11] First, the company's stock must be publicly traded. Second, the company must be recognized as a natural gas or oil pipeline company and its stock must be recognized and tracked by an investment information service such as Value Line. Third, pipeline operations must constitute a high proportion of the company's business. Until 2003, the Commission's policy was that the third standard could only be satisfied if a company's pipeline business accounted for, on average, at least 50 percent of a company's assets or operating income over the most recent three-year period.[12]

9. However, in recent years fewer corporations have satisfied the Commission's standards for inclusion in the gas and oil pipeline proxy groups. Mergers and acquisitions have reduced the number of publicly traded corporations with natural gas pipeline operations. Most of the remaining corporations are engaged in such significant non-pipeline business that their pipeline business accounts are significantly less than 50 percent of their assets or operating income. At the same time, there has been a trend toward MLPs owning natural gas pipelines. This trend has been even more pronounced in the oil pipeline industry, with the result that there are now no purely oil pipeline corporations available for inclusion in the oil pipeline proxy group and virtually all traded oil pipeline equity interests are owned by MLPs. Thus, for both oil and gas pipeline rate cases, the composition of the proxy group has become a significant issue, and the central question is whether, and how, to include MLPs in the proxy group.

B. The MLP Business Model

10. MLPs consist of a general partner, who manages the partnership, and limited partners, who provide capital and receive cash distributions, but have no management role. The units of the limited partners are traded on public exchanges, just like corporate stock shares. In order to be treated as an MLP for Federal income tax purposes, an MLP must receive at least 90 percent of its income from certain qualifying sources, including natural resource activities. Natural resource activities include exploration, development, mining or production, processing, refining, transportation, storage and marketing of any mineral or natural resource, including gas and oil.[13]

11. MLPs generally distribute most available cash flow to the general and limited partners in the form of quarterly distributions. At their inception, MLPs establish agreements between the general and limited partners, which define cash flow available for distribution and how that cash flow is

[4] *CAPP* v. *FERC,* 254 F.3d 289, 293 (2001) (*CAPP*).

[5] *Id. National Fuel Gas Supply Corp.,* 51 FERC ¶ 61,122, at 61,337 n.68 (1990). *Ozark Gas Transmission System,* 68 FERC ¶ 61,032, at 61,104 n.16. (1994).

[6] *Northwest Pipeline Company,* 79 FERC ¶ 61,309, at 62,383 (1997) (Opinion No. 396–B). *Williston Basin Interstate Pipeline Company,* 79 FERC ¶ 61,311, at 62,389 (1997) (*Williston I), aff'd, Williston Basin Interstate Pipeline Co.* v. *FERC,* 165 F.3d 54, 57 (*DC* Cir. 1999) (*Williston* v. *FERC*).

[7] The three sources used by the Commission are Global Insight: *Long-Term Macro Forecast—Baseline (U.S. Economy 30-Year Focus*); Energy Information Agency, *Annual Energy Outlook;* and the Social Security Administration.

[8] *Transcontinental Gas Pipe Line Corp.*, 84 FERC ¶ 61,084, at 61,423–4 (Opinion No. 414–A), reh'g denied, 85 FERC ¶ 61,323, at 62,266–70 (1998) (Opinion No. 414–B), *aff'd sub nom. North Carolina Utilities Commission* v. *FERC,* 203 F.3d 53 (DC Cir. 2000) (unpublished opinion). *Northwest Pipeline Co.*, 88 FERC ¶ 61,057, *reh'g denied*, 88 FERC ¶ 61,298 (1999), *aff'd CAPP* v. *FERC*, 254 F.3d 289 (DC Cir. 2001).

[9] *Williston* v. *FERC,* 165 F.3d at 57 (*citation omitted*).

[10] *Transcontinental Gas Pipe Line Corp.,* 90 FERC ¶ 61,279, at 61,936 (2000).

[11] *Id.* at 61,933.

[12] *Williston Basin Interstate Pipeline Company,* 104 FERC ¶ 61,036, at P 35 n.46 (2003) (*Williston II*).

[13] *See* Wachovia Securities, *Master Limited Partnerships: A Primer*, November 10, 2003, (*Wachovia Primer 1*) at 1, 3–4, reproduced in full in Docket No. OR96–2–012, Ex. SEP ARCO–22 and also in *Kern River Gas Transmission Company*, Docket No. RP04–274–000, Ex. No. BP–19 filed October 25, 2005; J.P. Morgan, *Industry Analysis, Energy MLPS*, dated March 28, 2002 (*J.P. Morgan 2002 Energy MLPs*) at 5–6, reproduced in full in Docket No. OR92–8–025, Ex. No. SWST–18, filed October 20, 2005; Wachovia Capital Markets, LLC, Equity Research Department, *Master Limited Partnerships: Primer 2nd Edition, A Framework for Investment* dated August 23, 2005 (*Wachovia 2nd Primer*) at 8–9, reproduced in full in Docket No. RP06–72–000 at Ex. S–36, filed May 31, 2006); Coalition of *Publicly Traded Partnerships, Publicly Traded Partnerships: What they are and how they work* (undated) (*Publicly Traded Partnerships*) at 1–3, reproduced in full in Docket No. RP06–72–000 at Ex. S–35, filed May 31, 2006, and Docket No. OR96–2–012, Ex. No. BP–19, filed October 25, 2005; CAPP Reply Comments, Attachment A at 2–3; APGA Additional Comments dated December 21, 2007.

to be divided between the general and limited partners. Most MLP agreements define ''available cash flow'' as (1) net income (gross revenues minus operating expenses) plus (2) depreciation and amortization, minus (3) capital investments the partnership must make to maintain its current asset base and cash flow stream.[14] Depreciation and amortization may be considered a part of ''available cash flow,'' because depreciation is an accounting charge against current income, rather than an actual cash expense. Thus, depreciation does not reduce the MLP's current cash on hand. The MLP agreement may provide for the general partner to receive increasingly higher percentages of the overall distribution if it raises the quarterly distribution. This gives the general partner incentives to increase the partnership's business and cash flow.[15]

12. The general partner has discretion not to distribute the entire amount of available cash flow for the proper exercise of the business, to create reserves for capital expenditures, for the payment of debt, and for future distributions. However, pipeline MLPs have typically distributed 90 percent or more of available cash flow. As a result, the MLP's cash distributions normally include not only the operating profit component of ''available cash flow,'' but also the depreciation component. This means that, in contrast to a corporation's dividends, an MLP's cash distributions generally exceed the MLP's reported earnings. The pipeline MLP's ability to distribute a high percentage of available cash flows reflects the stable cash flows underpinning its businesses.[16]

13. Because of their high cash distributions, MLPs have financed capital investments required to significantly expand operations or to make acquisitions through debt or by issuing additional units rather than through retained cash, although the general partner has the discretion to do so. These expansions financed through external debt are intended to provide a return equal to the cost of the capital plus some additional return for the existing unit holders, *i.e.*, it is accretive. Thus, the return on any newly issued units is expected to be sufficiently high to avoid dilution of the current distributions to the existing unit holders.[17]

14. MLPs may also provide significant tax advantages to their unit holders. Some MLPs allocate depreciation, amortization, and tax credits to the limited partners and away from the general partner. In some cases, the limited partner may have no net taxable income reported on the income tax information document (the K–1) the limited partner receives from the partnership each year, a pattern that may continue for years. In that case, the limited partner will not pay any taxes on the cash received from the partnership in the year of the distribution. To the extent a limited partner is allocated items of depreciation, credit, or losses that exceed the limited partner's ownership percentage, income taxes will be due on the difference when the unit is sold. However, this may not occur for many years. Over time the real cost of the future taxes declines while the future return of any tax savings that is reinvested increases. This can significantly increase the return to the investor over the holding period of the limited partnership unit.[18]

15. Moreover, distributions in excess of earnings are not taxed as long as the limited partner has a tax basis. Rather, the limited partner's tax basis is reduced and again any taxes are deferred until the unit is sold. By this tax deferral, the cash flow distributed in excess of earnings can be made available for reinvestment much earlier than would be the case of a corporate share.[19] This reduces the limited partner's risk because the limited partner's cash basis in the unit is reduced, but the distribution would not normally reduce the market price of the unit nor, if the firm has access to external capital, would this necessarily reduce its long term growth potential.

C. The Recent Cases on the Shrinking Proxy Group

1. Natural Gas Pipeline Cases

16. The Commission first addressed the problem of the shrinking natural gas pipeline proxy group in *Williston II*, 104 FERC ¶ 61,036 at P 34–43. In that NGA section 4 rate case, the Commission relaxed the requirement that natural gas business account for at least 50 percent of the corporation's assets or operating income. Instead, the Commission approved the pipeline's proposal to use a proxy group based on the corporations listed in the Value Line Investment Survey's list of diversified natural gas firms that own Commission-regulated natural gas pipelines, without regard to what portion of the company's business comprises pipeline operations. The proxy group approved in that case included four corporations that satisfied the Commission's historic standards[20] and five corporations with less pipeline business and more local distribution business than the Commission had previously allowed. The Commission set Williston's ROE at the median of this proxy group.

17. The Commission next addressed the proxy group issue in a 2004 order in *Petal Gas Storage, LLC,* 97 FERC ¶ 61,097 (2001), *reh'g granted in part and denied in part*, 106 FERC ¶ 61,325 (2004) (*Petal*). In that case, a jurisdictional storage company with market-based rates had applied for a certificate under NGA section 7 to construct pipeline facilities to transport gas from its existing storage facility to a new interconnection with Southern Natural Gas Co. The Commission found that Petal was not a new entrant in the jurisdictional gas transportation business, but was simply expanding its existing business and had not shown that it faced any unusual risks. Ordinarily in such circumstances the Commission would use the pipeline's own currently approved ROE for its existing services in determining an initial incremental rate for the expansion. However, because Petal had market-based rates for its existing services, there was no such currently approved ROE to use. Therefore, the Commission calculated the initial rate for Petal's expansion using the same median ROE which it had approved in *Williston*, which was the most recent litigated gas pipeline section 4 rate case.

18. When the Commission next addressed the proxy group issue, in *High Island Offshore System, LLC (HIOS)*,[21] and *Kern River Gas Transmission Company* (Opinion No. 486),[22] the *Williston II* proxy group had shrunk to six corporations. Moreover, the Commission found that two of those

[14] The definition of available cash may also net out short term working capital borrowings, the repayment of capital expenditures, and other internal items.

[15] *Wachovia Primer 1* at 6–7; *J.P. Morgan 2002 Energy MLPs* at 5, 14; *Wachovia 2nd Primer* at 9, 15–19.

[16] *J.P. Morgan 2002 Energy MLPs* at 11–13; *Wachovia 2nd Primer* at 24–25; Enbridge Initial Comments Attachment A, Wachovia Capital Markets, LLC, MLPs: *Safe to Come Back Into the Water (Wachovia MLPs)* dated August 20, 2007, at 2–4.

[17] *Id.*

[18] *See* PSCNY Initial Comments at 12–13 and Attachment 1 thereto at 2; *Wachovia Primer* at 4–5; *Publicly Traded Partnerships* at 2–3; *Wachovia 2nd Primer* at 1, 5, 20–22; *J.P. Morgan 2002 Energy MLPs* at 18–19.

[19] *Id.*

[20] The Commission noted that two of those four companies were in the process of merging so that in the future there would be only three pipeline corporations that satisfied our historic proxy group standards. *Williston II*, 104 FERC ¶ 61,036 at P 35.

[21] 110 FERC ¶ 61,043, *reh'g denied*, 112 FERC ¶ 61,050 (2005).

[22] 117 FERC ¶ 61,077 (2006), *reh'g pending.*

corporations should be excluded from the proxy group on the ground that their financial difficulties had lowered their ROEs to such a low level as to render them unrepresentative.[23] This left only four corporations eligible for the proxy group under the standards adopted in *Williston II*, three of whom derived more revenue from the distribution business than the pipeline business. The two pipelines contended that, in these circumstances, the Commission should include natural gas pipeline MLPs in the gas pipeline proxy group. They asserted that MLPs have a much higher percentage of their business devoted to pipeline operations than most of the corporations eligible for the proxy group under *Williston II*, and therefore are more representative of the risks faced by pipelines.

19. In *HIOS* and Opinion No. 486, the Commission rejected the proposals to include MLPs in the proxy group, and approved proxy groups using the four corporations still available under the *Williston II* approach of basing the proxy group on the Value Line Investment Survey's group of diversified natural gas corporations that own Commission-regulated pipelines. In *HIOS*, the Commission set the pipeline's ROE at the median of the four-corporation proxy group. In Opinion No. 486, the Commission took the same general approach as in *HIOS*, but set the pipeline's ROE 50 basis points above the median to account for the fact its pipeline operations have a higher risk than its distribution business.[24]

20. In rejecting the proposals to include MLPs in the proxy group in both cases, the Commission made clear that it was not making a generic finding that MLPs cannot be considered for inclusion in the proxy group if a proper evidentiary showing is made.[25] However, the Commission pointed out that data concerning dividends paid by the proxy group members is a key component in any DCF analysis, and expressed concern that an MLP's cash distributions to its unit holders may not be comparable to the corporate dividends the Commission uses in its DCF analysis. In Opinion No. 486, the Commission explained its concern as follows:

> Corporations pay dividends in order to distribute a share of their earnings to stockholders. As such, dividends do not include any return *of* invested capital to the stockholders. Rather, dividends represent solely a return *on* invested capital. Put another way, dividends represent profit that the stockholder is making on its investment. Moreover, corporations typically reinvest some earnings to provide for future growth of earnings and thus dividends. Since the return on equity which the Commission awards in a rate case is intended to permit the pipeline's investors to earn a profit on their investment and provides funds to finance future growth, the use of dividends in the DCF analysis is entirely consistent with the purpose for which the Commission uses that analysis. By contrast, as Kern River concedes, the cash distributions of the MLPs it seeks to add to the proxy group in this case include a return *of* invested capital through an allocation of the partnership's net income. While the level of an MLP's cash distributions may be a significant factor in the unit holder's decision to invest in the MLP, the Commission uses the DCF analysis solely to determine the pipeline's return on equity. The Commission provides for the return of invested capital through a separate depreciation allowance. For this reason, to the extent an MLP's distributions include a significant return of invested capital, a DCF analysis based on those distributions, without any adjustment, will tend to overstate the estimated return on equity, because the 'dividend' would be inflated by cash flow representing return of equity, thereby overstating the earnings the dividend stream purports to reflect.[26]

21. The Commission stated that it could nevertheless consider including MLPs in the proxy group in a future case, if the pipeline presented evidence addressing these concerns. The discussion in the order suggested that such evidence might include some method of adjusting the MLPs' distributions to make them comparable to dividends, a showing that the higher ''dividend'' yield of the MLP was offset by a lower long-term growth projection, or some other explanation why distributions in excess of earnings do not distort the DCF results for the MLP in question.[27] However, the Commission concluded that Kern River had not presented sufficient evidence to address these issues, and that the record in that case did not support including MLPs in the proxy group.

22. In addition, Opinion No. 486 pointed out that the traditional DCF model only incorporates growth resulting from the reinvestment of earnings, not growth arising from external sources of capital.[28] Therefore, the Commission stated that if growth forecasted for an MLP comes from external capital, it is necessary either (1) to explain why the external sources of capital do not distort the DCF results for that MLP or (2) propose an adjustment to the DCF analysis to eliminate any distortion.

2. Oil Pipeline Cases

23. In some oil pipeline rate cases decided before *HIOS* and Opinion No. 486, the Commission included MLPs in the proxy group used to determine oil pipeline return on equity on the ground that there were no corporations available for use in the oil proxy group.[29] In those cases, no party raised any issue concerning the comparability of an MLP's cash distribution to a corporation's dividend. However, that issue did arise in the first oil pipeline case decided after *HIOS* and Opinion No. 486, which involved SFPP's Sepulveda Line.[30] The Commission approved inclusion of MLPs in the proxy group in that case on the grounds that the included MLPs in question had not made distributions in excess of earnings. The order found these facts sufficient to address the concerns expressed in *HIOS* and Opinion No. 486.

D. Court Remand of Petal and HIOS

24. Both Petal and HIOS appealed the Commission's orders in their cases to the United States Court of Appeals for the District of Columbia Circuit. The court considered the appeals together, and it vacated and remanded the proxy group rulings in both cases.[31] The court emphasized that the Commission's ''proxy group arrangements must be risk-appropriate.'' [32] The court explained that this means that firms included in the proxy group should face similar risks to the pipeline whose ROE is being determined, and any differences in risk should be recognized in determining where to place the pipeline in the proxy group range of reasonable returns.

25. The court recognized that changes in the gas pipeline industry compel a change in the Commission's traditional approach to determining the proxy group, and the court stated that ''controversy about how it should change has been bubbling up in a number of recent cases,'' citing both *Williston II* and Opinion No. 486. But the court found that the cases on appeal ''seem[] to represent an arrival point of sorts for the Commission,'' pointing out that Opinion No. 486 had reversed an

[23] *HIOS*, 110 FERC ¶ 61,043 at P 118. Opinion No. 486, 117 FERC ¶ 61,077 at P 140–141.

[24] *Id.* at P 171–176.

[25] *Id.* at P 147. *See* also HIOS, 110 FERC ¶ 61,043 at P 125.

[26] Opinion No. 486, 117 FERC ¶ 61,077 at P. 149–150.

[27] Proposed Policy Statement at P 10–11

[28] *Id.* at P 152.

[29] *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,099 (1999).

[30] *SFPP, L.P.*, 117 FERC ¶ 61,285 (2006) (SFPP Sepulveda Order), *rehearing pending*.

[31] *Petal Gas Storage, LLC* v. *FERC,* 496 F.3d 695 (DC Cir. 2007) (Petal v. FERC).

[32] *Petal* v. *FERC,* 496 F.3d at 697, quoting *Canadian Association of Petroleum Producers* v. *FERC,* 254 F.3d 289 (*DC* Cir. 2001).

administrative law judge for deviating from the *HIOS* proxy group.[33]

26. The court held that the Commission had not shown that the proxy group arrangements it approved in *Petal* and *HIOS* were risk-appropriate. The court pointed out that the Commission had rejected the inclusion of MLPs in the proxy group on the ground that MLP distributions, unlike dividends, might provide returns of equity as well as returns on equity. While stating that this proposition is not ''self-evident,'' the court accepted it for the sake of argument. Nonetheless, the court stated that nothing in the Commission's decision explained why the companies selected by the Commission for inclusion in the proxy group are risk-comparable to HIOS. The court stated that when the goal is a proxy group of comparable companies, it is not clear that natural gas companies with highly different risk profiles should be regarded as comparable.

27. The court further stated that in placing Petal and HIOS in the middle of the proxy group in terms of return on equity, the Commission expressly relied on the assumption that pipelines generally fall into a broad range of average risk as compared to other pipelines. However, the court stated, this assumption is decisive only given a proxy group composed of other pipelines. Thus, the court reasoned that if gas distribution companies generally face lower risk than gas pipelines,[34] a risk-appropriate placement would be at the high end of the group. The court stated that the Commission erred by failing to explain how its proxy group arrangements were based on the principle of relative risk.

28. Therefore, the court vacated the Commission's orders with respect to the proxy group issue. The court stated that on remand, it did not require any particular proxy group arrangement, but stated that the overall arrangement must make sense in terms of the relative risk and in terms of the statutory command to set just and reasonable rates that are commensurate with returns on investments in other enterprises having corresponding risks.

II. The Proposed Policy Statement

29. A month before the court's decision in *Petal* v. *FERC,* the Commission reached a similar conclusion that its proxy group arrangements for gas and oil pipelines must be reexamined. Accordingly, on July 19, 2007, the Commission issued a Proposed Policy Statement, in which it proposed to modify its policy to allow MLPs to be included in the proxy group. The Proposed Policy Statement found that:

> Cost of service ratemaking requires that firms in the proxy group be of comparable risk to the firm whose equity cost of capital is being determined in a particular rate proceeding. If the proxy group is less than clearly representative, this may require the Commission to adjust for the difference in risk by adjusting the equity cost-of-capital, a difficult undertaking requiring detailed support from the contending parties and detailed case-by-case analysis by the Commission. Expanding the proxy group to include MLPs whose business is more narrowly focused on pipeline activities would help provide a more representative proxy group.[35]

30. However, the Commission proposed to cap the cash distribution used to determine an MLP's return under the DCF method at the MLP's reported earnings. The Commission found that this was necessary to exclude that portion of an MLP's distributions constituting return of equity. The Commission provides for the return *of* equity through a depreciation allowance. Therefore, the Commission stated that the cash flows used in the DCF analysis should be limited to those which reflect a return on equity. The concern was the pipeline could double recover its depreciation expense. The Commission also proposed to require a showing that the MLP has had stable earnings over a multi-year period, so as to justify a finding that it will be able to maintain the current level of cash distributions in future years. The Proposed Policy Statement found that these requirements should render the MLP's cash distribution comparable to a corporation's dividend for purposes of the DCF analysis.

31. Under the Proposed Policy Statement, the Commission would leave to individual cases the determination of which specific MLPs and corporations should be included in the proxy group. The Commission proposed to apply its final policy statement to all gas and oil cases that have not completed the hearing phase as of the date the Commission issues its final policy statement. The Commission stated that it would consider on a case-by-case basis whether to apply the final policy statement in cases that have completed the hearing phase.

III. The Record in the Policy Statement Proceeding

A. Pre-Technical Conference Comments

32. Twenty-two initial comments and thirteen reply comments were filed in response to the Proposed Policy Statement[36] and fall into two categories: (1) Those of gas and oil pipelines and the related trade associations (Pipeline Interests),[37] and (2) those of gas and oil producers and shippers, public and municipal utilities, state public service commissions, and related trade associations (Customer Interests).[38] Two comments were also submitted by individuals in their business or personal capacity.[39]

33. The comments focus on three issues: (1) Whether MLPs should be included in the gas pipeline proxy group at all; (2) whether the proposed cap on the MLP cash distributions used in the DCF analysis is necessary or adequate; and (3) whether the short- and long-term growth component of the DCF model should be modified given the financial practices of MLPs. Secondary points include the potential distorting effects of: MLP tax treatment, the large payouts by MLPs, the general partner's incentive distribution rights (IDRs), and the relative returns to the limited and general partners.

34. All parties recognize that MLPs are the only available entities for inclusion in the oil pipeline proxy group. The Pipeline Interests also all assert that the Commission correctly

[33] Opinion No. 486 reversed the ALJ's inclusion of the two financially troubled pipelines in the proxy group.

[34] The court noted that this seems likely.

[35] Proposed Policy Statement, 120 FERC ¶ 61,068 at P 17.

[36] Comments related to the technical conference are discussed *infra* and are characterized as conference comments or conference reply comments.

[37] The Pipeline Interests include: the Association of Oil Pipe Lines (AOPL); El Paso Corporation (El Paso); Enbridge Energy Partners, L.P. (Enbridge); the Interstate Natural Gas Association of America (INGAA); MidAmerican Energy Pipeline Group (MidAmerican); the National Association of Publicly Traded Partnerships (NAPTP); Panhandle Energy Pipelines (Panhandle); Spectra Energy Transmission, LLC (Spectra); TransCanada Corporation (TransCanada); and Williston Basin Interstate Pipeline Company (Williston).

[38] The Customer Interests include: The American Gas Association (AGA); the America Public Gas Association (APGA); the Air Transport Association of America; the Canadian Association of Petroleum Producers (CAPP); Indicated Shippers (consisting of Area Energy, LLC, Anadarko E&P Company LP, Anadarko Petroleum Corporation, Chevron USA Inc., Coral Energy Resources LP, Occidental Energy Marketing Inc., and Shell Rocky Mountain Production, LLC); the Natural Gas Supply Association (NGSA); the Process Gas Consumers Group; the Public Service Commission of New York (PSCNY); Tesoro Refining and Marketing Company (Tesoro); the Northern Municipal Distributors Group (NMDG) and the Midwest Region Gas Task Force Association filing jointly; and the Society for the Preservation of Oil Shippers (Society).

[39] The individual comments include Crowley Energy Consulting, supporting the Customer Interests, and Barry Gleicher, supporting the Pipeline Interests.

proposed to include MLPs in the gas pipeline proxy group. In contrast, most of the Customer Interests assert that there are enough corporations available for inclusion in the gas pipeline proxy group and that there is no need to include MLPs.

35. Both the Pipeline and Customer Interests question the proposed earnings cap on MLP distributions, with the Pipeline Interests asserting the cap is unnecessary and the Customer Interests asserting the cap should be lower. The Pipeline Interests assert that an MLP's share price reflects investors' projection of all cash flows it will receive from the MLP, including distributions in excess of earnings. Therefore, any cap on the distributions while still using a dividend yield reflecting the full share price would lead to distorted results.[40] The Customer Interests agree that the adjustment to MLP distributions is necessary to remove a double count attributed to depreciation, but they also uniformly assert that the proposed adjustment is inadequate to compensate for a wide range of financial factors that distinguish MLPs from Schedule C corporations.

36. On the growth rate issue, the Pipeline Interests in their initial comments generally agree that, if MLPs have greater distributions than a corporation, then the MLP may have less growth potential than a corporation. However, they argue that this fact does not require any additional adjustment, since any lower growth potential would be reflected in a reduced IBES growth forecast. The Pipeline Interests also state that distributions in excess of earnings do not prevent reinvestment or organic growth. They assert that pipeline MLPs have ready access to capital markets given their stable cash flows and the projected expansion of the pipeline system, which can be the basis for organic growth.[41]

37. In contrast, the Customer Interests assert that MLPs have significantly lower growth potential than corporations due to their distributions in excess of earnings, particularly over the long term.[42] They cite studies by established investment firms suggesting that the long term growth potential of MLPs is less than the long term growth factor now included in the DCF model. Moreover, they argue that given the high level of MLP distributions and declining opportunities for acquisitions with high returns, MLP growth must now come from investment of external funds in projects that will enhance organic growth of existing business lines.[43]

38. Some of the Customer Interests further argue that there are inadequate investment opportunities to support capital investment, and in the relatively near future the present level of MLP distributions will be maintained only by borrowing or issuing additional limited partners' units.[44] Therefore, they argue, sustainability of MLP growth is a major issue that must be examined in rate proceedings as this implies a lower equity cost-of-capital component in the pipeline's rate structure.[45] The Customer Interests also assert that the Commission's traditional DCF model has never permitted the inclusion of externally generated funds in the growth component of the model. Thus, to the extent the IBES projections include such external funds, they assert that this compromises the forecasts.

39. Finally, NGSA urge the Commission to initiate a new proceeding to consider alternatives to the DCF methodology for determining gas pipeline ROEs. AGA requests a technical conference to discuss the issues further, which as noted, the Commission granted with regard to the growth factors.[46] Two commenters assert that any change in policy should apply prospectively and should not apply to proceedings for which the hearing record is completed, *e.g.*, the *Kern River* proceeding.[47]

B. Technical Conference and Post-Technical Conference Comments

40. After review of the initial comments summarized above, the Commission issued a supplemental notice on November 15, 2007, requesting additional comments solely on the issue of MLP growth rates, and establishing a technical conference to discuss that issue. The technical conference was held on January 23, 2008. The Commission concluded that supplementing the record before the Commission could resolve the issue of how to project MLP growth rates assuming that the Commission ultimately decides to permit the use of MLPs in the proxy group. The Commission focused the technical conference on the appropriate method for determining MLP growth and, in particular, that which should be used if the Commission did not cap the distributions used to determine the dividend yield. Thus, whether to include MLPs in the proxy group or to limit the distributions to earnings were not issues before the technical conference. The technical conference was transcribed for use in the record herein.

41. Thirteen parties submitted comments in response to the November 15 notice, on three main topics: (1) The short-term growth component; (2) the long-term growth component; and (3) the weighting of these two components.[48] Of these, eight parties requested to participate on the panels and the Commission accepted all of the individuals proffered by these parties.[49] To summarize, two of the panelists represented parties that continued to assert that MLPs should not be included in the ROE proxy group.[50] More consistent with the premise of the conference, three panelists stated that there needed to be an adjustment to the long term GDP component the Commission currently uses in its DCF model.[51] Two stated that MLPs would grow at a slower rate than corporations in the long-term phase of growth. However, six other panelists asserted that an MLP as a whole could grow as fast as a corporation in the terminal phase, but most conceded that the use of incentive distribution rights (IDRs) [52] would cause the limited partnership interests to grow at slower rate than the

[40] AOPL initial comments at 8, 10; INGAA initial comments at 13–14; Spectra initial comments at 4; NAPTP initial comments at 4; NAPTP initial comments at 4.

[41] AOPL comments at 21–24 and attachments; Enbridge Energy reply comments at 5; INGAA comments at 22–24; TransCanada reply comments at 8–10.

[42] APGA reply comments at 11–15; CAPP initial comments at 1; CAPP reply comments at 6–7, and attachment at 3–4; NYPSC initial comments at 19–21, 23, including attachments of financial materials from major investment houses; NYPSC reply comments at 4–7; Tesoro reply comments at 25–27.

[43] *Id.*

[44] Crowley Energy Consultant initial comments; Society at 5–6.

[45] *Id.*

[46] AGA initial comments at 8.

[47] *Id.* at 8, 25; NGSA initial comments at 3, 11.

[48] APGA, AOPL, CAPP, Enbridge, INGAA, MidAmerica, NAPTP, NGSA, PSNYC, State of Alaska, Tesoro, TransCanada, and Williston.

[49] Professor J. Peter Williamson on behalf of the Association of Oil Pipelines, Mr. J. Bertram Solomon on behalf of the American Public Gas Association, Mr. Michael J. Vilbert on behalf of the Interstate Natural Gas Association of America, Mr. Park Shaper and Mr. Yves Siegel on behalf of the National Association of Publicly Traded Partnerships, Mr. Patrick Barry on behalf of the Public Service Commission of New York, Mr. Thomas Horst on behalf of the State of Alaska, and Mr. Paul Moul on behalf of TransCanada Corporation.

[50] PSCNY and APGA. CAPP, NGSA, and Tesoro supported this position but did not participate on the panel.

[51] PSCNY, APGA, and State of Alaska as well as the NGSA.

[52] As discussed further below, an incentive distribution provision in an MLP partnership agreement provides for an increasing large percentage of distributions to the general partner as the cash distributions per limited partnership share increase over time. The maximum incentive distribution to the general partner varies with the partnership agreement, but may be as high as 47 percent.

MLP as a whole.[53] In addition, three panelists questioned the reliability of the IBES forecasts for use in developing the short-term projection[54] and one stated that the longer term growth component of the formula should be weighted at no greater than 10 percent.[55]

IV. Discussion

42. Based on its review of all the comments and the record of the technical conference, the Commission is adopting the following policy concerning the composition of the natural gas pipeline and oil pipeline proxy groups: (1) Consistent with the Proposed Policy Statement, the Commission will permit MLPs to be included in the proxy group for both gas and oil pipelines; (2) the proposed earnings cap on the MLPs' distributions will not be adopted; and (3) the Commission will use the same DCF analysis for MLPs as for corporations, except that the long-term growth projection for MLPs shall be 50 percent of projected growth in GDP.

A. Whether To Include MLPs in the Gas and Oil Pipeline Proxy Groups

1. Comments

43. The first issue is whether to include MLPs in the proxy group used to determine a pipeline's return on equity. No commenter contests the Commission's statement that, in oil pipeline proceedings, MLPs are the only firms available for inclusion in the proxy group.[56] In addition, the Pipeline Interests all assert that the Commission correctly proposed to include MLPs in the gas pipeline proxy group. They agree with the Commission that this will result in a more representative proxy group that reflects long-term trends within the gas pipeline industry and assert that the resulting returns will encourage further investment in both the gas and oil pipeline industries. Including MLPs in the proxy group would reduce the need for difficult adjustments to projected equity returns to accommodate differences in risk among the different types of firms that might reasonably be included in the proxy group.

44. In contrast, most of the commenters representing the Customer Interests assert that there are enough corporations available for inclusion in the gas pipeline proxy group that there is no need to include MLPs. They further argue that the differences between the MLP and corporate business model render any use of MLPs inconsistent with the DCF model. APGA expressly states that the Commission should abandon the Proposed Policy Statement.[57]

45. The NMDG asserts that the Commission has not established that there is any reason to issue the Policy Statement or to relieve a pipeline applicant of the burden of establishing why any MLPs should be included in the proxy group. In this vein, Indicated Shippers assert that the Commission should consider alternative procedures for defining the proxy group, and that the improvement in El Paso Natural Corporation's and the William Company's financial situation and the creation of the Spectra Group suggest that the corporate gas proxy group is becoming more representative.

46. Finally, NGSA urges the Commission to initiate a new proceeding to consider alternatives to the DCF methodology for determining gas pipeline ROEs. NGSA generally supports including MLPs in the proxy group, subject to adjustments, as a means of continuing to use the DCF method on a temporary basis. But it argues that a better long-term solution to determining gas pipeline ROEs would be to stop using the DCF method, and instead adopt a risk premium approach to determining ROE. It asserts that the risk premium approach is used in Canada and does not require adjustments to account for variations in corporate structure.[58] INGAA states in its reply comments that the DCF methodology is not necessarily the only financial model that may be used, and asks the Commission to clarify that parties may propose other approaches in individual rate cases.[59]

2. Discussion

47. As the Commission pointed out in the proposed policy statement, the Supreme Court has held that ''the return to the equity owner should be commensurate with the return on investment in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'' [60] In order to attract capital, ''a utility must offer a risk-adjusted expected rate of return sufficient to attract investors.'' [61] In other words, the utility must compete in the equity markets to obtain capital.

48. The Commission performs a DCF analysis of publicly-traded proxy firms to determine the return on equity that markets require a pipeline to give its investors in order for them to invest their capital in the pipeline. As the court explained in *Petal Gas Storage, LLC* v. *FERC*, the purpose of the proxy group is to ''provide market-determined stock and dividend figures from public companies comparable to a target company for which those figures are unavailable. Market-determined stock figures reflect a company's risk level and when combined with dividend values, permit calculation of the 'risk-adjusted expected rate of return sufficient to attract investors.' '' [62] It is thus crucial that the firms in the proxy group be comparable to the regulated firm whose rate is being determined. In other words, as the court emphasized in *Petal*, the proxy group must be ''risk-appropriate.'' [63]

49. The Commission continues to believe that including MLPs in the gas and oil proxy groups will, as required by *Petal*, make those proxy groups more representative of the business risks of the regulated firm whose rates are at issue. While there has been some modest expansion of the number of publicly-traded diversified natural gas companies that could be included in the proxy group, this does not change one basic fact. This is that more and more gas pipeline assets are being transferred to publicly-traded MLPs, whose business is narrowly focused on pipeline activities. As a result, these MLPs are likely to be more representative of predominantly pipeline firms than the diversified gas corporations still available for inclusion in a proxy group. As such, including MLPs in the gas pipeline proxy group should render the proxy group more ''risk-appropriate,'' consistent with *Petal*. Moreover, MLPs are the only publicly traded ownership form for oil pipelines and are the most representative group for determining the equity cost of capital for oil pipelines.

[53] Two spoke for NAPTP and one each for AOPL, INGAA, the State of Alaska, and TransCanada. Williston, Enbridge, and MidAmerican also asserted that there is no reason to conclude the growth would not at least equal GDP. They did not speak to the issue of the limited partner growth rate that might be lower as a result of the incentive distributions to the general partner.

[54] APGA, PSCNY, and State of Alaska.

[55] TransCanada, Additional Comments dated December 21 at 12.

[56] AOPL initial comments at 5. Tesoro initial comments at 2. *See also* Society initial comments addressing the possible inclusion of oil pipeline MLPs in the proxy group.

[57] APGA initial comments at 14.

[58] NGSA initial comments at 13–15.

[59] INGAA reply comments at 18.

[60] *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 603 (1044).

[61] *CAPP*, 254 F.3d at 293.

[62] *Petal*, 496 F.3d at 697, quoting *Canadian Association of Petroleum Producers* v. *FERC*, 254 F.3d 289 (*DC* Cir. 2001).

[63] *Id.* 6.

50. As the court also emphasized in *Petal*, when a proxy group is less than clearly representative, there may be a need for the Commission to adjust for the difference in risk by adjusting the equity cost-of-capital, a difficult undertaking requiring detailed support from the contending parties and detailed case-by-case analysis by the Commission. Expanding a proxy group to include MLPs whose business is more narrowly focused on pipeline activities should help minimize the need to make adjustments, because the proxy group should be more representative of the regulated firms whose rates are at issue.

51. While this Policy Statement modifies Commission policy to permit MLPs to be included in the proxy group, the Commission is making no findings at this time as to which particular corporations and/or MLPs should be included in the gas or oil proxy groups. The Commission leaves that determination to each individual rate case. In order to assist the Commission in determining the most representative possible proxy group in those cases, the parties and other participants should provide as much information as possible regarding the business activities of each firm they propose to include in the proxy group, including their recent annual SEC filings and investor service analyses of the firms. This information should help the Commission determine whether the interstate natural gas or oil pipeline business is a primary focus of the firm and whether investors view an investment in the firm as essentially an investment in that business. While the Commission is not precluding use of diversified corporations or MLPs in the proxy group, the probable difference in the risk of the natural gas pipeline business and the risk profile of a diversified gas corporation with substantial local distribution activities has been highlighted by the parties and specifically recognized by the court in *Petal*.[64]

52. As discussed further below, the Commission recognizes that there are significant differences in the cash flows to investors and growth rates of corporations and MLPs. However, as discussed below, the Commission believes that those issues may be accounted for in a correctly performed DCF analysis, and therefore these differences do not preclude inclusion of MLPs in the proxy group.

53. Finally, the Commission has concluded that it will not explore other methods of determining the equity cost of capital at this time. The DCF model is a well established method of determining the equity cost of capital,[65] and other methods such as the risk premium model have not been used by the Commission for almost two decades. In the Commission's judgment, the uncertainty that would be created by reopening its procedures to include other approaches outweighs any limitations in its current pragmatic approach to the financial characteristics of MLPs. Therefore the alternatives suggested by certain of the parties will not be pursued further here. Nothing submitted at the January 23rd technical conference warrants different conclusions.

B. The Proposed Adjustment to MLP Cash Distributions

1. Comments

54. Both the Pipeline and Customer Interests attack the proposed earnings cap on MLP distributions, with the Pipeline Interests asserting the cap is unnecessary and the Customer Interests asserting the cap should be lower. The Pipeline Interests assert that there is no need to adjust the distributions included in the DCF model. They argue that investors include all cash flows that are generated by an MLP in applying a DCF model and do not distinguish between a return of investment and a return on investment[66] since depreciation is an accounting concept that is used to calculate an MLP's earnings that is not relevant to determining the cash flows included in a DCF analysis.[67] The Pipeline Interests further assert that an unadjusted DCF calculation does not result in the double recovery of the depreciation component of an MLP's cost-of-service.[68]

55. Moreover, the Pipeline Interests assert that, because all parts of the DCF model are linked, if the distribution component is reduced, this will necessarily affect the growth component of the model. They assert that any adjustment limiting the distributions used to earnings will result in below market returns to investors and thus any such adjustment is arbitrary.[69] As an alternative, they suggest that if an MLP's distributions are unrepresentative, it is wiser to exclude that MLP from the sample as an outlier.[70] They further assert there have been corporations in the proxy group that have distributed dividends in excess of earnings for years and the Commission has never required an adjustment.[71] They claim that in any event there are practical problems with an earnings cap because earnings are reported quarterly (unlike distributions which are reported monthly) and such reports are unedited and may require seasonal adjustments.[72]

56. The Customer Interests support the Commission's initial conclusion that an adjustment to MLP distributions is necessary to remove a double count attributed to depreciation, but they also uniformly assert that the proposed adjustment is inadequate to compensate for a wide range of financial factors that distinguish MLPs from Schedule C corporations. Thus, they assert that further adjustments to the distributions should be made to reflect the tax advantages that flow to MLPs,[73] the alleged distortions that result from incentive distributions to the general partner,[74] and the fact that distributions may also include cash derived from the sale of assets, bond issues, and the issuance of further limited partnership units.[75] Several also assert that for an MLP's distribution to be comparable to that of a corporation, the percentage of the MLP's distribution included in the DCF model should be no higher than the percentage of earnings corporations typically include in their dividend payments, or about 60 percent.[76] Finally, to the extent that INGAA and others assert that depreciation is not a direct source of cash flow for distribution, the Customer Interests cite to investor literature and MLP filings

[64] *Id.* at 6–7.

[65] See *Illinois Bell Telephone Co.* v. *FCC*, 988 F.2d 1254, 1259 n. 6 (DC Cir. 1993), stating, ''The DCF method 'has become the most popular technique of estimating the cost of equity, and it is generally accepted by most commissions. Virtually all cost of capital witnesses use this method, and most of them consider it their primary technique.' '' *quoting J. Bonbright et al., Principles of Public Utility Regulation* 318 (2d ed. 1988).

[66] AOPL initial comments at 16, 18; Spectra Energy initial comments at 14; NAPTP initial comments at 3.

[67] INGAA initial comments at 5–6, 15–18; NAPTP initial comments at 4–5; MidAmerican initial comments at 5; Panhandle initial comments at 3 and attachment; Williston initial comments at 11.

[68] INGAA initial comments at 15–17 and 20–21.

[69] AOPL initial comments at 8, 10; INGAA initial comments at 13–14; Spectra initial comments at 4; PAPTP initial comments at 4.

[70] INGAA initial comments at 13; Spectra Energy initial comments at 5, 19–20.

[71] INGAA initial comments at 18; MidAmerica initial comments at 6.

[72] AOPL initial comments at 24–25; Spectra Energy initial comments at 17–18.

[73] Crowley Energy at 2; Indicated Shippers initial comments at 24; PSCNY initial comments at 12–13; Society initial comments, *passim*.

[74] APGA at 7–8; Crowley Energy at 2; Indicated Shippers comments at 24; NGSA at 6; Society initial comments *passim*.

[75] Crowley Energy initial comments; Society, *passim*; Tesoro reply comments at 26.

[76] CAPP initial comments at 3, 6; Indicated Shippers initial comments at 23; PSCNY initial comments at 6; Tesoro initial comments at 15.

with the SEC disclosure that state exactly the opposite.[77]

2. Discussion

57. The Commission concludes that a proposed earnings cap on the MLP distributions that would be included in the DCF model should not be adopted. On further review, the Commission concludes that its concern with the distinction between return on capital and return of capital improperly conflates cost-of-service rate-making techniques with the market-driven DCF method used for determining the pipeline's cost of obtaining capital in the equity markets. This is inconsistent with the DCF model's internal structure.

58. The fundamental premise of the DCF model is that a firm's stock price should equal the present value of its future cash flows, discounted at a market rate commensurate with the stock's risk. No commenter seriously contends that an investor would distinguish between cash flows attributable to return on capital, and those attributable to return of capital, in performing a DCF analysis. In short, under the DCF model, all cash flows, whatever their source, contribute to the value of stock. The Commission agrees that, since the DCF model uses the total unadjusted cash flows to determine a stock's value, it is theoretically inconsistent to use lower adjusted cash flows when using the DCF model to determine the return required by investors purchasing the stock.

59. More specifically, the investor first determines what risk should be attributed to a prospective investment and the related return that would be required in order to make the investment. For example, the investor may conclude that the minimum return from the investment must be 10 percent on equity. The investor then looks at the total cash flows from all sources over time, including the current distribution (or dividend) and its projected growth. The DCF model yields a price for the share that reflects the present value of those cash flows at the discount rate.

60. In contrast, the Commission solves the DCF formula for the return required by the investor, not the price of the stock. This results in the Commission calculating the proxy firm's ROE as the sum of (1) the proxy firm's dividend yield and (2) the projected growth rate. The Commission determines dividend yield by dividing the proxy firm's cash distribution (or dividend) by its current stock price. As the court in *Petal* pointed out, both the stock price and distribution (or dividend) figures of the proxy firms are market-determined. Moreover, an investor's projection of the MLP's growth prospects would be affected by the actual level of its distributions, with distributions in excess of earnings generally perceived as reducing the growth projection because less cash flow is available for reinvestment in the firm.[78] The pipeline industry generally acknowledged this fact in earlier rate proceedings as well as in this proceeding, or at least until its later phases.[79] As illustrated in Appendix B to this Policy Statement, a DCF analysis using market-determined inputs for each of the variables in the DCF formula appropriately determines, consistent with *Petal*, the percentage return on equity a pipeline must offer in the equity market in order to attract investors, whether the proxy firms are corporations or MLPs.

61. If the Commission were to cap the distribution used to determine an MLP's dividend yield at below the market-determined level, but use the actual market price of the MLP's publicly traded units and a growth projection reflecting the actual level of distributions, the DCF analysis would fail to achieve its intended purpose of determining the return the equity market requires in order to justify an investment in the pipeline. That is because there would be a mismatch among the inputs the Commission used for the variables in the DCF formula. The DCF analysis presumes that the market value of an MLP's units is a function of the entire present and future cash flow provided by an investment in those units. Given this interlocking nature of the variables in the DCF formula, INGAA and the other pipeline commenters are correct that limiting the distribution input to earnings, while using market values for the other inputs to the DCF formula, would result in the calculation of a return below that implied in the share price.[80]

62. In addition, use of a proxy MLP's full distribution in determining ROE will not cause a double recovery of the depreciation component included in the pipeline's cost-of-service rates. In a rate case, the Commission determines the dollar amount of the ROE component of the cost-of-service of the pipeline filing the rate case by multiplying (1) the percentage return on equity required by the market by (2) the actual rate base of the pipeline in question. Having found that use of a proxy MLP's full distribution is necessary for the DCF analysis to accurately determine the percentage return on equity required by the equity markets, it necessarily follows that the same percentage should be used in determining the dollar amount of the ROE component of the pipeline's cost of service. Awarding the pipeline an ROE allowance based on that percentage of its own rate base will give the pipeline an opportunity to provide its investors with the return on their investment required by the market. Such an ROE allowance does not implicate the separate depreciation allowance the Commission also includes in a pipeline's cost of service to provide for return of investment.

63. The Commission therefore concludes that it is not analytically sound to cap the distributions to be included in the DCF model by the MLP's earnings. As discussed below, the record is more convincing that if any adjustment is required, this issue centers on the projected growth of the MLPs. Given this, it is not necessary to discuss the appropriate level for any earnings cap.

64. Having concluded that an earnings cap adjustment would be inappropriate, the Commission also concludes that it is not necessary to address the long term sustainability of MLPs as a whole, or those of the particular MLP whose rates are under review. As has been discussed, the DCF model has two components. One is the cash distribution in the current period and

[77] APGA initial comments at 11; CAPP reply comments at 3–4; NGSA reply comments at 9–10; Tesoro reply comments at 19–21.

[78] Because a corporation typically retains a portion of its earnings, general financial theory suggests that it is able to use internally generated funds to obtain a higher growth rate. An MLP's higher level of distributions theoretically produces a lower projected growth rate. In fact, the most recent IBES projections for the four corporations included in the gas pipeline proxy group in Appendix A average 10.5 percent, while the IBES growth projections for the six MLPs average only 6.67 percent.

[79] *See* AOPL Initial Comments, Williamson Aff. at 6–7; AOPL Reply Comments at 6–7; Panhandle Initial Comments, Attachment dated August 30, 2007, *Analysis of the Use of MLPs in the Group of Proxy Companies Used For Determining Gas and Oil Pipeline Return on Equity* at 10–11; *Transwestern Pipeline Company, LLC*, Docket No. RP06–614–000, Ex. TW–56 filed September 29, 2006, at 23–24; *High Island Offshore System, LLC*, Docket No. RP96–540–000, Ex. HIO–73 filed August 26, 2006 at 28–29; *Texaco Refining and Marketing Inc, et al.* v. *SFPP, L.P.*, Docket No. OR96–2–012, Ex. SEP SFPP–56 dated February 14, 2005 at 9–10; *Mojave Pipeline Company*, Docket No. RP07–310–000, Ex. MPC–70 dated February 2, 2007 at 28–32 (including tables and charts on the relative growth rates of corporations and MLPs); *Kern River Gas Transmission Company*, Docket No. RP04–274–000, Ex. KR–107 at 17.

[80] The earnings cap on the distribution would artificially reduce an MLP's dividend yield below that assumed by the investor in valuing the stock. Adding the artificially reduced dividend yield to a growth projection that reflects the MLP's reduced growth prospects due to its high actual distributions would inevitably result in an ROE lower than that actually required by the market.

the second is the discounted value of the anticipated growth in that distribution. The increase in distribution is driven by the anticipated growth in earnings that generates the cash to be used for the distribution. If projected earnings suggest that the distribution cannot be sustained, this will be reflected in the projected cash flow for the firm and ultimately the MLP unit price.[81] In this regard, some MLPs will inevitably do better and others not as well, and from the Commission's point of view, this will be reflected in the required rate of return developed by the DCF model.

65. For this reason, as the Pipeline Interests suggest, if an MLP's financial condition or growth rate is outside the norm for the industry, or is unrepresentative, the best way to deal with this issue is to exclude that particular MLP from the proxy group sample, just as the Commission has done with unrepresentative diversified gas corporations. Finally, the Commission has previously held that the issue of whether MLPs are an appropriate investment vehicle for the pipeline industry as a whole is a matter that is best left for Congress, the body that authorized MLPs in the first instance. Thus the Commission will not address that issue, or the appropriateness of the tax deferral aspects of MLPs further in this proceeding.[82] Nothing presented at the technical conference warrants different conclusions.

66. The Commission now turns to the issue of how to project the growth rates of MLPs. For the reasons discussed below, the Commission finds that the differences between MLPs and corporations, and particularly the MLPs' lower growth prospects due to their distributions in excess of earnings, are appropriately accounted for in the growth projection component of the DCF model.

C. The Short-Term Growth Component

67. This section of the Policy Statement discusses whether changes should be made to the short-term growth component of the DCF model. For the short-term growth estimate the Commission currently uses security analysts' five-year forecasts for each company in the proxy group, as published by IBES. IBES is a service that monitors the earnings estimates on over 18,000 companies of interest to institutional investors. More than 850 firms contribute data to IBES to be used in its projections and the information is provided on a subscription basis.

1. Comments

68. The Pipeline Interests support the continued use of five-year IBES forecasts for short-term growth projections in the DCF model with regard to MLPs. In general, they argue that, while no growth forecast is perfect, IBES provides the best available information regarding what investors expect in companies. They state that IBES estimates are unbiased and publicly available. They add that since IBES estimates are company-specific, they already adjust for any differences among the entities analyzed, including whether the company is organized as an MLP or corporation.

69. For example, NAPTP supports the IBES estimates because the various items that may affect the growth rate expected by the market, such as the effect of IDRs to the general partner, are already factored into IBES projections.[83] Williston Basin argues that since IBES data is drawn from many financial analysts, and since the information is widely accepted in the financial industry, use of IBES helps reduce subjectivity when estimating appropriate short-term growth forecasts.[84] TransCanada acknowledges that IBES may underestimate short-term growth for MLPs, but argues that modifying IBES would only further understate short-term growth rates and compound any problems brought on by trying to estimate growth for MLPs.[85] The AOPL similarly argues that studies have shown that IBES estimates understate short-term growth rates for MLPs and therefore the growth projections are conservative.[86]

70. However, certain parties recommend that the Commission discontinue using IBES estimates for MLPs to project short-term growth rates in its DCF model. These parties argue there is considerable uncertainty of whether the individual forecasts IBES is reporting reflect earnings growth or distribution growth. The State of Alaska asserts that IBES growth estimates of distributions per share are incomplete and unreliable for use in the DCF calculation. It argues that there are not a sufficient number of stock analysts providing IBES with distribution per share growth estimates to get a reliable estimate for the purposes of calculating the cost of equity for pipeline companies. Speaking for the State of Alaska, Dr. Thomas Horst notes that of the 37 gas and oil companies he examined data for, there was not a single case where IBES received two or more estimates of distributions per share growth rates.[87]

71. APGA states that through communications with personnel at Thompson Financial, the owner of IBES and the publisher of its forecasts, it verified that the five-year analysts' growth rate projections reported by IBES for MLPs are projections of earnings per unit, and not distributions per unit.[88] PSCNY also considers IBES projections unreliable, since they do not account for such parameters as IDRs. It questions whether analysts can truly estimate MLP growth beyond two years. It also questions whether lower earnings retention necessarily would translate into lower short-term IBES growth rates relative to corporations.[89] CAPP expresses concerns that the analysts that produce IBES growth estimates continue to be concentrated within the same financial institutions that also underwrite the securities of the subject companies, invest in those securities, and furnish other financial services to the subject enterprises[90] and also notes the uncertainty of whether the forecasts are for earnings or distributions.[91]

72. However AOPL maintains that historical records confirm that what analysts actually report to IBES is distribution growth. It adds that Yves Siegel, Wachovia's representative, confirmed that Wachovia provides projected MLP distribution growth to IBES, and not earnings growth.[92] NAPTP asserts that, for projecting the short-term growth rates of MLPs, the Commission should use analysts'

[81] The investor requires a minimum return that reflects the perceived risk of the investment. Thus, if the cash flows decline, so will the price of the stock assuming the percentage return required remains the same.

[82] *See SFPP, L.P.*, 121 FERC ¶ 61,240, at P 20–61 (2007) for an extensive discussion of these income tax allowance and tax deferral policy issues relating to MLPs. Moreover, any tax advantages are normally reflected in the MLP unit price. See also INGAA Reply Comments at 12–13; MidAmerica, Reply Comments at 4–5; AOPL Reply Comments at 11–12; Tr. 121–22; AOPL Post-Technical Conference Comments at 14.

[83] NAPTP, Initial Technical Conference Comments at 3.

[84] Williston, Additional Comments dated December 21 at 2.

[85] TransCanada, Additional Comments dated December 21 at 12–13.

[86] AOPL, Initial Technical Conference Comments at 5, Williamson Post-Technical Conference Aff. at 3, 8.

[87] State of Alaska, Reply Comments dated February 20 at 5.

[88] APGA, Reply Technical Conference Comments at 5–6.

[89] NYPSC Initial Technical Conference Comments at 5–6.

[90] CAPP Supplemental Comments dated December 21 at 3–4.

[91] CAPP Initial Technical Conference Comments at 7.

[92] AOPL Initial Technical Conference Comments at 4–5.

forecasts of growth in the MLP's distributable cash flow for all of its equity holders and that, while not perfect, this is the best information that is available.[93]

2. Discussion

73. The Commission's longstanding policy is to use security analysts' five-year growth forecasts as reported by IBES to determine the short-term growth rates for each proxy company. In *Opinion No 414–A,*[94] the Commission explained that the growth rate to be used in the DCF model is the growth rate expected by the market. Thus, the Commission seeks to base its growth projections on ''the best evidence of the growth rates actually expected by the investment community.'' [95] Moreover, the Commission stated, the growth rate expected by the investment community is not, quoting a Transco witness, ''necessarily a correct growth forecast; the market may be wrong. But the cost of common equity to a regulated enterprise depends upon what the market expects not upon precisely what is going to happen.'' [96]

74. The Commission held that the IBES five-year growth forecasts for each company in the proxy group are the best available evidence of the short-term growth rates expected by the investment community. It cited evidence that (1) those forecasts are provided to IBES by professional security analysts, (2) IBES reports the forecast for each firm as a service to investors, and (3) the IBES reports are well known in the investment community and used by investors. The Commission has also rejected the suggestion that the IBES analysts are biased and stated that ''in fact the analysts have a significant incentive to make their analyses as accurate as possible to meet the needs of their clients since those investors will not utilize brokerage firms whose analysts repeatedly overstate the growth potential of companies.'' [97]

75. Based on the comments, the Commission concludes that the IBES five-year growth forecasts should also be used for any MLP included in the proxy group. While the Commission recognizes that there may be some statistical limitations to the IBES projections, the record here demonstrates that it remains the best and most reliable source of growth information available. IBES publishes security analysts' five-year growth forecasts for MLPs in the same manner as for corporations. No party questions the Commission's findings in past cases that investors rely on the IBES projections in making investment decisions, because they are widely available and generally reflect the input of a number of financial analysts. Also, since IBES projections are company-specific, they should already adjust for any differences among the entities analyzed, including any reduced growth prospects investors expect due to the fact an MLP makes distributions in excess of earnings. In fact, the most recent IBES projections for the seven MLPs included in the gas pipeline proxy group in Appendix A, Table 1, average 6.86 percent, while the IBES growth projections for the four corporations average 10.75 percent. Thus, those MLP growth projections are about 400 basis points below those for the corporations.

76. As discussed above, several parties assert that the security analysts' five-year growth forecasts appear generally to be forecasts of growth in earnings, rather than distributions. They point out that the relevant cash flows for the DCF model are the MLP's distributions to the limited partners, and therefore the growth projections used in the DCF analysis should be growth in distributions, not earnings. Despite these concerns, the Commission again concludes that the IBES short-term growth projections provide the best estimate of short-term growth rates for MLP distributions. Professor J. Peter Williamson, on behalf of AOPL, reviewed historical IBES five-year growth forecasts for five oil pipeline MLPs since the mid-1990s. IBES had published five to nine growth forecasts for each of the MLPs, with a total of 39 forecasts. Williamson compared each of these 39 forecasts to the MLP's actual growth in earnings and distributions during the subsequent five-year period. He found that 29 of the 39 IBES five-year forecasts, or 74 percent, were closer to the actual average distribution growths over that time span than the actual earnings growths. In his study, Williamson also found that historical records fail to support any claims that the IBES forecasts are biased or tend to overstate future growth.[98] In fact, 22 of the 39 forecasts were lower than the actual distribution growth, and 17 were higher. Thus, far from showing a pattern of overestimating actual growth in distributions, the IBES growth projections underestimated growth in distributions 56 percent of the time, a conservative result. Accordingly, regardless of whether financial analysts stated they are reporting projected earnings growth or projected distribution growth for MLPs, the Commission finds the five-year growth rates that IBES reports are acceptable since they closely approximate distribution growth for MLPs, which is the short-term input for the DCF model.

77. As noted, the State of Alaska expresses concerns that there are an insufficient number of stock analysts providing IBES with estimates which are expressly identified at forecasts of MLP distribution per share growth to obtain reliable short-term growth projections for MLPs. At the technical conference, Mr. Horst presented a chart showing the number of IBES report counts for 37 oil and gas pipeline companies—both corporations and MLPs. The chart breaks the analyst report counts down into earnings reports and distribution reports. It shows that analysts made an average of 3.1 earnings reports for each MLP and an average of 0.8 distribution reports for each MLP.[99] However, as discussed above, Williamson's analysis of a historical period suggests that actual MLP growth in the short term tracks IBES earnings projections better than distribution projections. Moreover, Mr. Horst's averages include many smaller, less frequently traded MLPs and thus understate the number of analysts that are likely to follow the larger, more established pipeline MLPs likely to be included in a proxy group. The Commission therefore concludes that the number of reports made by analysts for oil and gas companies MLPs is acceptable for use in the DCF model.

78. Some of the Customer Interests are agreeable to the continued use of IBES forecasts, but only under certain conditions. Specifically, PSCNY contends that, should the Commission continue to use IBES forecasts in its DCF model, any MLP the Commission allows in a proxy group must be market-tested and representative of a natural gas pipeline company. PSCNY contends that IBES would be acceptable if the MLP is tracked by Value Line, has been in operation for at least five years as an MLP, and derives 50-percent of its operating income from, or has 50 percent of its assets devoted to, interstate natural gas transportation operations. PSCNY also contends that the Commission should exclude MLPs from proxy groups when their growth

[93] NAPTP Post-Technical Conference Comments at 1–3.

[94] 85 FERC ¶ 61,323 at 62,268–9.

[95] *Id.* at 62,269.

[96] *Id.*

[97] *Transcontinental Gas Pipe Line Corp.,* 90 FERC ¶ 61,279, at 61,932 (2000).

[98] AOPL, Post-Technical Conference Comments, Williamson Aff. at 2–6.

[99] State of Alaska, Comments dated December 21, Second Horst Aff. at 4–5; Reply Comments dated February 20 at 5, Third Horst Aff. at 16–17, 21.

projections are illogical or anomalous.[100]

79. The Commission agrees in principle with PSCNY's position that IBES forecasts should only be used for an MLP that is tracked by Value Line, has been in operation for at least five years as an MLP, and derives at least 50 percent of its operating income from, or 50 percent of its assets devoted to, interstate operations. Thus, when developing its proxy group, a pipeline should select MLPs that are well established and have assets that are predominantly gas and oil pipelines. Such pipelines are those most likely to have risk comparable to the pipeline seeking to justify its rates. However, there may be particular MLPs that do not satisfy these criteria, but are still appropriate for inclusion in the proxy group. The pipeline must justify including such an MLP in its proxy group. Thus, while the Commission encourages pipelines to follow the guidelines suggested by PSCNY, it will not make them a condition of including a particular MLP in the proxy group. As suggested by the parties, the Commission will continue to exclude an MLP from the proxy groups if its growth projection is illogical or anomalous.

80. Two parties state that, should the Commission continue to use IBES projections to estimate short-term growth rates in its DCF model for MLPs, it must modify the estimated rates. Tesoro states that, if the Commission makes no adjustments to dividend distributions of MLPs, it should significantly reduce its IBES short-term growth estimates to recognize the fact that an MLP cannot indefinitely sustain its operations when distributions consistently exceed earnings. It argues that, if the Commission caps MLP distributions at earnings, it would still have to reduce IBES rates in order to recognize the fact that proxy group members would not be reinvesting retained earnings in ongoing operations, thereby achieving lower growth rates. Tesoro only recommends no adjustments to short-term growth estimates if the Commission caps distributions at a level below earnings, offering 65-percent of earnings as an example.[101]

81. The State of Alaska recommends that if a pipeline company's distributions per share exceed its earnings per share (as is frequently the case with pipeline MLPs), then the expected growth rate of the pipeline's distributions per share should be adjusted to equal (1) the expected growth of its earnings per share, multiplied by (2) the ratio of the pipeline's earnings per share to its distributions per share. According to Alaska, if a pipeline company distributes more cash than its current earnings, then the projected growth in earnings per share should also be adjusted by the ratio of the pipeline's earnings per share to its distributions per share.[102]

82. The Commission rejects these proposals by Tesoro and the State of Alaska. As already discussed, to the extent investors expect an MLP's distributions in excess of earnings to reduce its growth prospects, that fact should be reflected in the IBES five-year growth projections themselves, without the need for any further adjustment. MLPs must publicly report their earnings and distribution levels. Therefore, the security analysts are aware of the degree to which each MLP is making distributions in excess of earnings. The security analysts presumably take that information, together with all other available information concerning the MLP, into account when making their projections. Moreover, these proposals would have a similar effect as capping the distributions used to calculate dividend yield at or below the level of the MLP's earnings. For the reasons previously discussed, the Commission finds that any cap on an MLP's distributions used in the DCF model at a level below the actual distribution is inconsistent with the basic operation of the DCF model. Thus, using a straight IBES five-year projection without modification presents the best method of estimating an MLP's short-term growth rate.

83. APGA further suggests revising IBES growth rates by averaging them with the comparable growth forecasts reported by Zacks Investment. It states that this averaging could help remove anomalous or outlying growth rates. It offers as an example, on December 10, 2007, IBES projected a five-year growth rate of 7.60 percent for Kinder Morgan Energy Partners (KMEP), whereas Zacks Investment projected a 33.70 percent growth rate for that company. APGA argues that the Commission should also use Value Line reports to test the reasonableness of projected growth rates for MLPs.[103]

84. The Commission will not require that IBES growth rates be averaged with the corresponding company's growth rates as reported for Zacks Investment at this time, or that Value Line reports be used to test the reasonableness of projected growth rates for MLPs. Finally, PSCNY requests that the Commission clarify that Thomson Financial Data posted on Yahoo.com may be used in the DCF formula, since Thomson Financial owns IBES.[104] The Commission clarifies that the growth projections to be used in the DCF model are those reported by IBES. If they are the same growth projections posted by Thomson Financial Data on Yahoo.com, then they are acceptable for the DCF model.

D. The Long Term Growth Component

1. Comments

85. At this point the critical issue is whether the long term growth component of the Commission's DCF methodology should be modified in determining the equity cost of capital for an MLP. As has been discussed, for more than a decade the Commission has required that projected long-term growth in GDP be used as the corporate long term (terminal) growth component of the DCF calculation. The discussion at the technical conference disclosed four general positions. The AOPL,[105] NAPTP,[106] INGAA,[107] and TransCanada [108] asserted that the use of long term GDP is equally applicable to MLPs as to corporations.[109] However, the APGA,[110] PSCNY,[111] and the State of Alaska [112] all made suggestions for a reduction to the GDP growth projection to reflect the different retention and investment practices of MLPs.[113] In a different vein, INGAA suggested the use of the average of the projected long term inflation rate and projected long term

[100] PSCNY Supplemental Comments dated Dec. 21 at 3–5.

[101] Tesoro, Comments on Growth dated December 21 at 3–4, 5–7.

[102] State of Alaska, Comments dated Dec. 21 at 3–4; Second Horst Aff. at 2–3, 5–11.

[103] APGA, Additional Comments dated Dec. 21 at 3, 9–10.

[104] PSCNY, Supplemental Comments dated Dec. 21 at 5.

[105] AOPL, Post-Technical Conference Comments at 7–9, 13.

[106] NAPTP Additional Comments dated Dec. 21 at 1, 10–11; Post-Technical Conference Comments at 4–8.

[107] INGAA, Additional Initial Comments dated Dec. 21 at 2–3; Post-Technical Conference Reply Comments at 3–6.

[108] TransCanada Post-Technical Comments at 2–5.

[109] MidAmerican and Williston supported this position.

[110] APGA Additional Comments dated Dec. 21 at 4, 7–8; Initial Post-Technical Comments at 2, J. Bertram Solomon Aff. at 4–8.

[111] PSCNY, Supplemental Comments dated Dec. 21 at 5, 8–9 and appended Prepared Statement of Patrick J. Barry for the January 23, 2008 Technical Conference; Initial Post-Technical Conference Comments at 14–16.

[112] State of Alaska, Comments dated Dec. 21 at 3–4 and Second Horst Aff. at 3, 5–7. Reply Comments dated February 20, 2008 at 6.

[113] NGPA and Tesoro also supported a lower long term growth rate for MLPs.

GDP as a proxy for the lower growth rate of the limited partnership interests, but only if the Commission concluded that some reduction in the MLP long term growth rate was warranted.[114] NAPTP further argued that there must be an upward adjustment of the limited partnership growth rate to reflect the equity cost of capital of the limited and general partners, and thus that of the entire firm.[115]

86. The Pipeline Interests also generally assert that an MLP's terminal growth can be at least equal to that of a corporation, and perhaps exceed it. They assert that MLPs are able to raise external capital in a tax efficient manner. Because an MLP does not retain cash it does not immediately need and can distribute without the tax penalty, it is under less pressure to invest idle capital. Rather, an MLP can wait until sounder investment opportunities are available and pursue them more discreetly, which results in a more consistent return from the projects selected.[116] Moreover, while the computation is very complicated, the tax-deferral aspects of MLP limited partnership interest normally result in a higher per unit price when issued and thus a lower cost of equity capital to the issuing MLP. For these reasons the Pipeline Interests conclude that MLPs should readily find profitable investment opportunities despite their lower retention ratios.[117]

87. The Pipeline Interests further assert that the record demonstrates that MLPs have a long term history of growing distributions and an overall growth rate that has at times been higher than that of corporations.[118] They cite to the example of KMEP in particular and that KMEP has been able to grow its distributions in good or poor financial environments.[119] They therefore conclude that there is no reason to conclude that MLPs cannot continue to grow at least as fast as corporations or that the relatively high distribution growth rate for the industry as a whole will not be sustained.[120] However, INGAA concedes that even if an MLP as a whole can grow as fast as a corporation, the limited partnership interests would grow less rapidly than the MLP as a whole because of the IDRs[121] most MLPs have granted their general partners.[122] The Pipeline Interests also argue that investors will not invest in enterprises that have a projected growth rate that is less than GDP and that such firms are likely to fail.[123]

2. Discussion

a. Should the MLP long-term growth projection be lower than projected growth in GDP?

88. As discussed in the previous section, in determining the appropriate growth projections to use in its DCF analysis, the Commission seeks to approximate the growth projections investors would rely upon in making their investment decisions. This principle applies equally to the long-term growth projection, as to the short-term growth projection. When the Commission first established its policy of basing the long-term growth projections on projected growth in GDP in Opinion No. 396–B and *Williston I,* the Commission stated in both cases, ''The purpose of using the DCF analysis in this proceeding is to approximate the rate of return an investor would reasonably expect from a pipeline company.''[124] The Commission found, ''the record shows that Merrill Lynch and Prudential Bache do not attempt to make long-term growth projections for specific industries or companies in doing DCF analyses. Instead they use the long-term growth of the United States economy as a whole as the long-term growth forecast for all firms, including regulated businesses.''[125] The Commission thus relied heavily on evidence concerning investment house long-term growth projections in deciding to base its long-term growth projections for corporations that were properly included in the proxy group on the long-term growth of GDP. In affirming this aspect of *Williston I,* the DC Circuit similarly relied on the fact that the record ''demonstrated that major investment houses used an economy-wide approach to projecting long-term growth * * * and that existing industry-specific approaches reflected investor expectations and many unfounded economic assumptions.''[126]

89. Consistent with this precedent, the key question in deciding what long-term growth projection the Commission should use in its DCF analysis of MLPs is whether investors expect MLP long-term growth rates to be less than projections of growth in GDP. The record established here shows that at least two major investment houses project terminal growth rates for MLPs that are notably lower than the current 4.43 percent projected growth in GDP. Citicorp Smith Barney (Citicorp)[127] projects a 1 percent terminal growth rate for pipeline MLPs. Wachovia projects terminal growth rates for individual MLPs that vary from zero to 3.5 percent.[128] The Wachovia projection for each MLP which the Commission is likely to include in a proxy group[129] is for a 2.5 percent terminal growth rate.[130]

[114] INGAA Additional Initial Comments dated Dec. 21 at 3–4 and Vilbert Report attached thereto, *passim.*

[115] NAPTP Reply Comments dated Sept. 19 at 2–4; Additional Comments dated Dec. 21 at 9–12.

[116] NAPTP Post-Technical Conference Comments at 9; TransCanada Post Technical Conference Comments at 8–9.

[117] NAPTP, *id.* 2, 5–6. TransCanada, *id.*

[118] NAPTP Additional Comments dated Dec. 21 at 4–8.

[119] NAPTP Additional Comments dated December 21 at 8.

[120] NAPTP and Post-Technical Conference Comments at 11–12 AOPL Post-Technical Conference at 9–10 and Williamson Post Technical Conf. Aff. Ex. at 1 and 2.

[121] IDRs operate as follows. Most MLP agreements provide that the limited partners own 98 percent of the equity when the firm is first created and the general partner 2 percent. Thus, given a distributable cash of $1,000, the limited partners would obtain $980 (98 percent) and the general partner $20.00 (2 percent). The partnership agreement also provides that as the total cash available for distribution increases, a greater share goes to the general partner, including that which would be available in liquidation. For example, the partnership agreement may provide that once distributable cash is $3,000, the general partner will receive 2 percent based on its partnership interest and 48 percent based on the IDRs.

At that point the limited partners' share of the distribution is $1,500 (50 percent) and the general partner's share is also $1,500 (50 percent). Thus, while the limited partners' distribution has grown in the relevant time frame (by 50 percent), it has not grown as fast as it would have absent the general partner's IDR. Absent the IDR the general partner's share would only be $60. Since a proportionately smaller share of future value flows to the limited partners in the initial years, the projected long term growth rate for a limited partnership interest will be lower. Therefore the limited partnership interests have lower return than that of the general partner.

[122] INGAA Additional Initial Comments dated December 21 at 5; TransCanada.

[123] AOPL, Post-Technical Comments at 7–8. TransCanada, Additional Comments dated Dec. 21 at 2, 4–5.

[124] Opinion No. 396–B, 79 FERC ¶ 61,309 at 62,383. *Williston I,* 79 FERC at 62,389.

[125] Opinion No. 396–B, 79 FERC ¶ 61,309 at 62,382. *Williston I,* 79 FERC ¶ 61,311 at 62,389. As the Commission pointed out in a subsequent case, the exhibits in both the Opinion No. 396–B proceeding and *Williston I,* describing Prudential Bache's methodology stated that it used a lower long-term growth projection for electric utilities, because of their high payout ratios. *System Energy Resources, Inc.,* 92 FERC ¶ 61,119, at 61,445 n.23 (2000).

[126] *Williston Basin Interstate Pipeline Co.* v. *FERC,* 165 F.3d 54 (*DC* Cir. 1999).

[127] Society, Reply Comments at 11, citing: *Citicorp Master Limited Partnership Monitor and Reference Book,* Citigroup Investment Research (March 2007) at 28, Figure 24.

[128] Comments of Enbridge Energy Partners, L.P., Attachment A, Wachovia Equity Research Paper dated August 20, 2007 at 9–12; Wachovia Equity Research dated January 30, 2008, *MLP Outlook 2008: Cautious Optimism* at 39–44.

[129] These are the MLPs listed in Tables 1 and 2.

[130] NAPTA, in its Post-Technical Conference Comments, provided a publication by Morgan Stanley Research which, among other things, reported on our January 23, 2008 technical

The Pipeline Interests did not submit any evidence of a major investment house projecting long-term growth rates for MLPs equal to or above the growth in GDP. Thus, applying the same approach as that in Opinion No. 396–B and *Williston I,* the record supports a finding that investors project MLP growth rates significantly below the growth in GDP.

90. To counter this conclusion, the Pipeline Interests argue that these lower figures reflect the investment houses' desire to use ''conservative'' estimates in order to prevent unrealistic investor expectations. However, as discussed above, the Commission has found in earlier cases that investment houses try to give the most accurate information to their investors. In any event, it is appropriate for the Commission to use growth estimates that reflect the investment houses' view of what investors should realistically expect from an investment in an MLP. Moreover, the fact that some MLPs have grown rapidly in the past does not mean necessarily that they will maintain the same growth rate in the future. In fact, KMEP's projected growth rate is expected to drop in future years.[131] This record also demonstrates that a rate of long term growth is dependent on the base years selected. Thus, the Customer Interests focus on more recent years to show that the growth rate has slowed for many MLPs.[132]

91. The Pipeline Interests also argue that investors will not invest in entities with a projected long term growth rate that is less than the long-term growth in GDP.[133] However, the fact is that, despite major investment houses advising their clients that MLPs will have long-term growth rates below GDP, investors have continued to invest in MLPs, and in increasing amounts through 2007. Historically this was true even though the Commission's analyses continue to indicate that the IBES five-year growth projections for MLPs are lower than those for corporations.[134]

92. At bottom, the key financial assumption advanced by the Pipeline Interests is that MLPs and corporations have equal access to capital. However, the Customer Interests advance credible reasons why MLPs may not have as ready access to capital markets in the future given the MLPs' unique financial structure. This would reduce the total capital pool available to the MLPs, thus reducing their growth prospects. These include a greater exposure to interest rate risk,[135] the increased cost of capital that a high level of IDRs imposes on an MLP,[136] and lower future returns from either acquisitions or organic investments as the MLP industry matures.[137] This latter point is of greater importance to MLPs because they are limited by law to a narrower range of investment opportunities than a schedule C corporation. These arguments suggest why the long term forecasts by investment houses investors rely on could conclude that the long term growth rate for MLPs would be less than the long term GDP the Commission uses for corporations. Each addresses the consistency of investment opportunities and as such consistency of access to capital markets that MLPs are dependent on to maintain long term growth.

93. In particular, the Commission concludes that corporations (1) have greater opportunities for diversification because their investment opportunities are not limited to those that meet the tax qualifying standards for an MLP and (2) are able to assume greater risk at the margin because of less pressure to maintain a high payout ratio. It is a corporation's higher retention ratio that allows this greater flexibility. This is consistent with the fact that Prudential Bache projected the long-term growth rates of electric utilities to be less than that of the economy as a whole because of their greater dividend payouts and lower retention ratios.[138] Therefore, investors would quite reasonably conclude that MLP long term growth rates would be lower than that of tax paying corporations, because MLPs have fewer opportunities to participate in the broad economy that underpins the Commission's current use of long-term growth in GDP.

94. Thus, while it is true that the Commission uses GDP as a proxy for long term growth, the point here is not whether some firms, including MLPs may have a growth rate that is more or less than the proxy over time. The issue is whether MLPs have the same relative potential as the corporate based economy that has been the basis for the Commission's assumption that a mature firm will grow at the same rate as the economy as a whole. For the reasons stated, the Commission concludes that the collective long term growth rate for MLPs will be less than that of schedule C corporations regardless of the past performance of MLPs the Pipeline Interests have inserted in the record.

b. What specific projection should be used for MLPs?

95. We now turn to the issue of exactly what long-term growth projection below GDP should be used in MLP pipeline rate cases. As the Commission recognized when it established its policy of giving the long-term growth projection only one-third weight, while giving the short-term growth projection two-thirds weight, ''long-term growth projections are inherently more difficult to make, and thus less reliable, than short-term projections.'' [139] Thus, as the Commission has stated with respect to the other aspects of its long-term growth projection policy, the Commission is ''required to choose from among imperfect alternatives'' [140] in deciding what specific long-term growth projection should be used for MLPs.

96. The technical conference panelists advanced four methods of determining long-term growth projections for MLPs which are less than the growth in GDP. After reviewing all four, the Commission adopts the APGA proposal to use a long-term growth projection for MLPs equal to 50 percent of long term GDP.[141] At present, that proposal results

conference. That publication, at page 3, states, ''At Morgan Stanley, we assume an MLP will increase its cash flow—1.5%–3.0% per year beyond 2012. Importantly we make the same assumption in forecasting long-term growth for our C-Corp companies.'' *Pipeline MLPs: What's in the Pipeline,* Morgan Stanley Research at 3. These projections are also less than the current projection of 4.43 percent long-term growth in the economy as a whole. However, we give greater weight to the Citigroup and Wachovia publications, because those publications include specific long-term growth projections for individual MLPs, whereas the Morgan Stanley publication simply sets forth a general range it uses without specifying how that range is distributed among individual firms. Also, the Citigroup and Wachovia analyses were not issued in response to the technical conference.

[131] APGA, Post-Technical Conference Reply Comments, Solomon Aff. at 4.

[132] APGA, Post-Technical Conference Reply Comments at 4–5 and attached Solomon Aff. at 4–9.

[133] TransCanada, Additional Comments at 5; AOPL Post-Technical Conference Comments at 8.

[134] See Appendix A, which displays in part the comparative corporate and MLP short term growth projections. *Cf.* PSCNY Post Technical Conference Comments at 7–8.

[135] Indicated Shippers Initial Comments at 21, citing Citicorp Smith Barney; AGPA Reply Comments at 5; Wachovia August 20, 2007 Report, *supra,* at 1–2;

[136] PSCNY Supplemental Comments at 3, n. 8 and Initial Post-Technical Conference Comments at 12.

[137] PSCNY Initial Post-Technical Conference Comments at 9–10 and cited Value Line attachments; Reply Comments at 5–6 citing Merrill Lynch, n. 16.

[138] *System Energy Resources, Inc.,* 92 FERC ¶ 61,119, at 61,445 n. 23 (2000).

[139] *Transcontinental Gas Pipe Line Corp.,* 84 FERC ¶ 61,084, at 61,423 (1998).

[140] *Northwest Pipeline Corp.,* 88 FERC ¶ 61,298, at 61,911 (1999).

[141] APGA Additional Comments dated Dec. 21 at 2–3, 8; Outline for the Presentation of Bertrand Solomon on the Behalf of APGA dated January 23, 2008 at 3; Initial Post-Technical Conference

Continued

in a long-term growth projection of 2.22 percent. This is within the range of long-term growth projections used by investment houses for MLPs discussed in the preceding section. For example, Wachovia projects terminal growth rates for individual MLPs that vary from zero to 3.5 percent,[142] and its projection for each MLP which the Commission is likely to include in a proxy group is for a 2.5 percent terminal growth rate.[143] Therefore, in light of the inherent difficulty of projecting long-term growth, the 50 percent of GDP proposal would appear to result in a long-term growth projection that falls within any reasonable margin of error for such projections, while giving recognition to the fact that investors expect MLPs' long-term growth to be less than that of GDP.[144]

97. The Commission also concludes that the other three proposed methods of projecting MLP long-term growth rates all have flaws justifying their rejection. The State of Alaska and the NYPSC propose methods which would result in varying long-term growth projections for each MLP, based upon financial information for each of the MLPs to be included in a proxy group. These proposals are contrary to the Commission's policy of using a single long-term growth projection for all corporations, based on the fact that it is not possible to make reliable company-by-company long-term growth projections.[145] The State of Alaska and NYPSC have provided no basis to conclude that they have provided a more reliable way to make long-term growth projections for individual MLPs. Their difficulty in doing so reinforces the Commission's traditional practice in this regard.

98. The State of Alaska suggests adjusting the GDP long term growth projection used for each MLP based on its current positive or negative retention ratio.[146] Thus, if an MLP's retention ratio was positive, then 100 percent of long term growth in GDP would be used. If the retention ratio was less than one, then the long term growth in GDP would be reduced accordingly. This theory essentially caps the long term growth rate at the earnings of the entities involved. As such, it suffers from the same weakness as the original proposal to cap the distribution component included in the model at earnings. Consistent with the premise of the DCF model that a stock is worth the present value of all future cash flows to be received from the investment, investors base their DCF analyses on the MLP's entire cash distributions, including projected cash flows generated by external investments, which to date is the bulk of the investment for the MLP model. In addition, because MLPs rely substantially on external capital to finance growth, the fact one MLP currently pays out more of its earnings than another MLP does not necessarily mean that the first MLP's long-term growth prospects are less than the second MLP's. Moreover, Alaska's proposed method assumes each MLP's current retention ratio will continue indefinitely into the future, without any support for the accuracy of such an assumption.

99. The NYPSC recommends use of a modified form of the sustainable growth model the Commission uses to determine electric return on equity.[147] Under that method, the Commission determines growth based on a formula under which growth = br + sv, where b is the expected retention ratio, r is the expected earned rate of return on common equity, s is the percent of common equity expected to be issued annually as new common stock, and v is the equity accretion rate. The br component of this formula projects a utility's growth from the investment of retained earnings, and the sv component estimates growth from external capital raised by the sale of additional units. The NYPSC would assume zero growth from investment of retained earnings (the br component) and then base the long-term growth projection for each MLP on projected growth from external capital resulting from the sv component of the br + sv formula.

100. A fundamental problem with this approach is that the Commission has consistently held that the br + sv formula only produces a projection of short-term growth, similar to the IBES projections.[148] This follows from the fact that the inputs used in the formula are all drawn from Value Line data and projections reaching no more than five years into the future. In addition, there would be great uncertainties in projecting any of the inputs to the formula, such as the retention ratio, the amount and timing of equity sales, and the projected price of the sale for any longer period. Moreover, setting the br component at zero assumes that an MLP can only grow through the use of external capital. This does not reflect accurately the retention and investment flexibility vested in an MLP's general partners or the fact that some MLPs may reinvest a fairly high proportion of the free cash available. Therefore this methodology does not appropriately adjust the long term GDP component that the Commission now uses for corporations.

101. Finally, INGAA provided a complex model designed to calculate the equity cost of capital for an MLP as a whole.[149] This model was developed by Mr. Vilbert and attempts to calculate the equity cost of capital for both the limited and the general partners. At their inception, MLPs establish agreements between the general and limited partners, which define how the partnership's cash flow is to be divided between the general and limited partners. Such agreements give the general partners IDRs, which provide for them to receive increasingly higher percentages of the overall distribution, if the general partners are able to increase that distribution above defined levels. The INGAA model recognizes that, as a result of these incentive distribution rights, a DCF analysis of the MLP as a whole should (1) include higher projected growth rates for the general partner interest than for the limited partner interest and (2) a correspondingly higher value for general partner interests than the MLP units which would, in turn, reduce the

Comments. J. Bertrand Solomon Aff. at 3–4, 6–7 and supporting exhibits.

[142] Comments of Enbridge Energy Partners, L.P., Attachment A, Wachovia Equity Research Paper dated August 20, 2007 at 9–12; Wachovia Equity Research dated January 30, 2008, *MLP Outlook 2008: Cautious Optimism* at 39–44.

[143] The Commission will not use the specific long-term MLP growth projections of the investment houses to determine the cost of equity for specific firms for the same reasons we have not done so with respect to the projections of long-term growth in GDP the Commission uses for corporations. As the Commission explained in *Michigan Gas Storage Co.,* 87 FERC ¶ 61,038, at 61,162–5 (1999) and *Williston Basin Interstate Pipeline Co.,* 87 FERC ¶ 61,264, at 62,005–6 (1999), there is no evidence as to how the investment house figures were derived which limits their utility in determining the cost of equity for an individual firm. However, as here, the Commission has relied on the perceptions of the investment community in developing a generic long term growth rate. See also Opinion No. 396–B, 79 FERC ¶ 61,309 at 62,384.

[144] As the *DC* Circuit stated with respect to our choice of the relative weighting of the short- and long-term growth projections, the choice of the long-term growth component is also an exercise ''hard to limit by strict rules.'' *CAPP* v. *FERC,* 254 F.3d at 290.

[145] Opinion No. 396–B, 79 FERC ¶ 61,309 at 62,382.

[146] State of Alaska, Comments dated December 21 at 3–4 and Second Horst Aff. at 3, 5–7. Reply Comments dated February 20, 2008 at 6.

[147] PSCNY, Supplemental Comments dated Dec. 21 at 5, 8–9 and appended Prepared Statement of Patrick J. Barry for the January 23, 2008 Technical Conference; Initial Post-Technical Conference Comments at 14–16.

[148] *See Southern California Edison Co.,* 92 FERC ¶ 61,070, at 61,262–3 (2000).

[149] INGAA, Additional Initial Comments dated Dec. 21 at 4–5 and *Report on the Terminal Growth Rate for MLPs for Use in the DCF Model* by Michael J. Vilbert dated December 21, 2007 (Vilbert Report), particularly at 10.

general partner's current ''dividend'' yield. However, since there are relatively few publicly traded general partner interests, in most cases the estimated equity cost of capital for the general partner can only be derived through various assumptions that markup the limited partner's cost of capital.

102. INGAA drew two significant conclusions from Mr. Vilbert's analysis. First, application of the Commission's existing DCF methodology solely to the limited partner interest in the MLP would generate returns relatively close to those that would be required to reflect the growth rate, and cost of equity capital, for the MLP as a whole. Second, if the Commission remains concerned that a DCF analysis using data solely for the limited partner interest,[150] together with a long-term growth rate equal to the growth in GDP, may overstate the appropriate return based on the limited partners' projected growth, the long-term growth projection could be adjusted by averaging projected long term GDP and the projected long term inflation rate.[151] The latter would have to be updated regularly to test its accuracy.

103. Mr. Horst, the witness for the State of Alaska, responded that the INGAA model was mathematically correct, but that the model's assumptions about the rate of growth and incentive distributions were open to question and the results would overstate the equity for the MLP as a whole.[152] INGAA filed a reply to Mr. Horst's arguments by Mr. Vilbert that first calculates the actual DCF values for eight publicly traded general partner interests.[153] Mr. Vilbert then compares the resulting value of the general partner interests for the same eight firms generated by the model. The results calibrate more closely to the eight market samples than the analysis produced by Mr. Horst but, like Mr. Horst's analysis, tend to overstate the value of the general partner interest.

104. The Commission will not use the INGAA model for several reasons. First, the internal operations of the model are relatively opaque, and the model appears to have a relatively wide range of error. Second, as the court stated in *Petal Gas Storage, LLC* v. *FERC,*[154] the purpose of the proxy group is to ''provide market-determined stock and dividend figures from public companies comparable to a target company for which those figures are unavailable.'' While INGAA used eight publicly traded general partner interests to test the validity of the model, most of those interests are not related to MLPs that have been proffered in rate proceedings before the Commission. In the absence of such market-determined figures for the general partner interest of the MLPs to be included in the proxy group, use of the INGAA model would necessarily entail deriving an estimated equity cost of capital for the general partner through various assumptions that markup the limited partner's cost of capital. In these circumstances, use of the INGAA model would be inconsistent with the purpose of the proxy group of providing a fully market-based estimated cost of capital.

105. INGAA alternatively suggested that the returns from the current methodology be reduced somewhat to reflect the admittedly lower growth rate of a MLP's limited partnership interests. However, its proposal to do that by averaging GDP growth projections with the Federal Reserve's target inflation rate appears to have no analytical basis. Therefore, INGAA's recommendations will not be accepted here.[155]

106. Based upon the above discussion, the Commission concludes that the long term growth component for an MLPs equity cost of capital should be 50 percent of long term GDP, rather than the full long term GDP currently used for corporations.

c. Proposed upward adjustments to the long term component

107. NAPTP asserted that the Commission should increase rather than decrease the long term growth component used to determine an MLP's equity cost of capital to reflect the general partner component of an MLP's equity.[156] It asserts that equity cost of capital must be determined for the MLP as a whole, not just for the limited partners. NAPTP asserts that the return, and hence the projected growth rate, must generate sufficient cash flows to support the IDRs provided the general partner under most MLP agreements. To this end, it marked up the growth rate of the limited partners to reflect the portion of the equity effectively controlled by the general partner through its IDRs. Thus, if the growth rate for the limited partners was 10 percent and the general partner received a total of 50 percent of the distributions, the growth rate for the general partner could be as high as 20 percent. The Shipper Interest partners argued that this only rewarded the general partner for its excessive distributions and would inordinately increase the MLPs equity cost of capital.

108. Both INGAA's witness Vilbert and the State of Alaska's witness Horst rejected the NAPTP approach on mathematical grounds. Both argue that the gross-up fails to properly value the general partner's interest at multiples that reflect the general partner interest's relative risk to that of the limited partners.[157] Furthermore, Vilbert argues that the general partner's risk, while always greater than that of the limited partner, declines as the MLP matures and the general partner's share of distributions increases.[158] As this occurs, the growth rate of the general partner's interest slows and approaches that of the limited partner. Failure to adjust for both facts means that the general partner's interest is undervalued using the NAPTP method, thus overstating the yield, and thus the return, that would be incorporated in the DCF model. As such, the NAPTP approach is inappropriate.

109. The Commission agrees that the NAPTP method is mathematically and conceptually flawed. Moreover, it has the same basic limitation as the INGAA model in that there is simply not enough publicly generated, transparent information at this time to support developing an equity cost of capital for the MLP as a whole. INGAA likewise attempted to develop an approach that would reflect the growth rate, and the return, of the MLP as a whole. The Commission has previously concluded that this approach has too many practical limits. Therefore the Commission will not pursue this issue further here.

E. The Weighting of the Growth Components

110. The third issue is whether to change the weighting of the short-term and long-term components now used in

[150] In such a DCF analysis the dividend yield would be calculated by dividing the distribution to the limited partner by the limited partner share price.

[151] INGAA Additional Initial Comments dated Dec. 21 at 4–6; Vilbert Report at 18–19.

[152] State of Alaska, Reply Comments dated February 20, 2008 at 6 and Third Horst Aff. at 6–15.

[153] INGAA, Post-Technical Supplemental Comments dated March 12, 2008 at 2–4 and Vilbert Aff. attached thereto, *passim.* The Commission will accept INGAA's March 12 filing because INGAA had no earlier opportunity to reply to the material contained in the State of Alaska's February 20, 2008 filing.

[154] 496 F. 3d 695 at 699.

[155] See AOPL Post-Technical Comments at 3–4, which suggest that the complexity of Mr. Vilbert's model and the use of its assumption indicate that it is more appropriate to rely on the limited partners' distributions in a DCF analysis.

[156] NAPTP Additional Comments dated Dec. 21 at 3–4.

[157] State of Alaska, Reply Comments dated February 20, 2008 at 6 and Third Horst Aff. at 2, 4–5.

[158] INGAA, Post-Technical Supplemental Comments dated March 12, 2008 at 2–4 and Vilbert Aff. at 6–12.

the Commission's DCF model. As has been discussed, the Commission's existing policy is to provide two-thirds of the weight to the short-term component and one-third to the long-term component. TransCanada suggested changing the weighting, so that the 90 percent of the weight should be to the short-term component.[159] MidAmerica recommended the use of a single stage model and abandoning the long-term component completely.[160] However, these suggestions received no support from the other parties and would serve to increase the overall returns by sharply diminishing or eliminating the long-term component of the DCF.

111. As discussed in the previous section, the Commission's longstanding policy is that the growth component of the DCF analysis of gas and oil proxy companies must include a projection of long-term growth, and the court affirmed that policy in *Williston I.* As the Commission has explained in numerous orders, the DCF methodology requires that a long-term evaluation be taken into account. In the preceding section, the Commission has fully discussed why the long-term growth projection for MLPs should be 50 percent of projected long-term growth of GDP.

112. The Commission established its policy of giving the long-term growth projection one-third weight, while the short-term growth projection is given two-thirds weight, in *Opinion Nos. 414–A.* The Commission explained its weighting policy as follows:

> While determining the cost of equity nevertheless requires that a long-term evaluation be taken into account, long-term projections are inherently more difficult to make, and thus less reliable, than short-term projections. Over a longer period, there is a greater likelihood for unanticipated developments to occur affecting the projection. Given the greater reliability of the short-term projection, we believe it appropriate to give it greater weight. However, continuing to give some effect to the long-term growth projection will aid in normalizing any distortions that might be reflected in short-term data limited to a narrow segment of the economy.[161]

The court affirmed this policy in *CAPP* v. *FERC*,[162] stating that ''in an exercise so hard to limit by strict rules, it would likely be difficult to show that the Commission abused its discretion in the weighting choice.''

113. The need to normalize any distortions that may be reflected in short-term data limited to a narrow segment of the economy applies equally to the IBES five-year growth projections for MLPs as for corporations. At the same time, the two-thirds weighting for the short-term growth projections recognizes their greater reliability. Moreover, TransCanada does not establish why the MLP short-term growth projections should be accorded a greater weight than that of corporations. In fact, as was discussed in the previous section, the record reasonably shows that investment houses include a long-term growth component in their DCF analyses of MLPs, and use a long-term growth projection that is lower than the projected long-term growth in GDP. Therefore the Commission will not modify the two-thirds to one-third ratio it now uses in its DCF model and will apply that ratio to all pending cases.

V. Pending Proceedings

114. The procedural issue here is whether this Policy Statement should be applied to all proceedings that are now before the Commission for which the ROE issue has not been resolved with finality. NGSA asserts that any new policy should apply only prospectively and not to cases now pending before the Commission. Indicated Shippers take the same position, asserting that application of the Policy Statement to pending proceedings would be administratively inefficient and would materially delay instituting new rates in the *Kern River* proceeding, which is now before the Commission on rehearing. Indicated Shippers further argue that in *Kern River* the Commission addressed and rejected the use of MLPs without some adjustment to reflect the fact that MLP distributions involve both a return of and return on equity. They also argue that there would be no inequity because Kern River could always file a new section 4 rate case if the existing proceeding proved unsatisfactory. Finally, Indicated Shippers assert that a policy change should not be applied retroactively because it does not have the force of law[163] and because policy statements are considered ''statements issued by the agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [164]

115. MidAmerica answered that the Policy Statement must be applied to all pending cases and *Kern River* in particular for two reasons. It states that in *Petal* the court both seriously questioned the Commission's analysis regarding MLPs and held that it was improper to include an entity of higher risk (a pipeline) and one of lower risk, such as a diversified natural gas company, in the same sample without adjusting the returns. MidAmerica argues that application of the *Williston* doctrine[165] requires that it be given an opportunity to address the return on equity issue further. This is particularly the case since the court suggested applying the upper end of the range of reasonableness as a way of compensating for the difference in risk. MidAmerica asserts that application of either this suggestion or use of the unadjusted MLP sample Kern River advanced at hearing would result in the same return on equity.

116. The Commission concludes that the instant Policy Statement must be applied to all proceedings now pending at hearing before an ALJ or before the Commission for which the ROE issue has not been resolved with finality. In *Petal* v. *FERC*, the court vacated and remanded the Commission's orders on the ROE issue in both *Petal* and *HIOS*. In both those cases, the Commission applied its current policy of using a proxy group based on the corporations listed in the Value Line Investment Survey's list of diversified natural gas firms that own Commission-regulated natural gas pipelines, without regard to what portion of the company's business comprises pipeline operations. The court found that the Commission had not shown that the proxy group arrangements used in those cases were risk-appropriate. In this Policy Statement we have reexamined our proxy group policy in light of the *Petal* v. *FERC* remand as well as current trends in the gas and oil pipeline industries, and determined we must modify our policy as discussed above. Therefore, because the Commission's current proxy group policies as applied in prior cases have not withstood court review, the Commission cannot and will not apply them in currently pending

[159] TransCanada, Reply Comments at 13–14; Additional Comments dated December 21 at 9–12.

[160] MidAmerican Response to Request for Additional Comments dated December 21 at 9–11.

[161] Opinion No. 414–A, 84 FERC at 61,423.

[162] 254 F.3d at 289.

[163] *Citing Consolidated Edison of New York, et al.*, v. *FERC*, 315 F.3d 316, 323–24 (*DC* Cir. 2003) (*Consolidated Edison*).

[164] *Citing American Bus Assn.* v. *ICC*, 627 F.2d 525, 529 (*DC* Cir. 1980).

[165] *See Williston Basis Interstate Pipeline Co.* v. *FERC*, 165 F.3d 54 (*DC* Cir. 1999) (*Williston*). MidAmerica cites to the related administrative proceeding, *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036 (2003), but the principles are the same. The cited Commission case was in response to the remand in cited court decision.

cases in which there has been no final determination of ROE issues.

The Commission orders:

(A) The Commission adopts the Policy Statement and supporting analysis contained in the body of this order.

(B) This Policy Statement is effective the date issued and shall apply to all oil and gas pipelines then pending before the Commission in which there has been no final determination of ROE issues.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A

TABLE 1.—DCF ANALYSIS FOR SELECTED CORPORATIONS AND MLPS OWNING JURISDICTIONAL NATURAL GAS PIPELINES

[Six-month period ended 03/31/2008, in percent]

Company	(1) 6-mos. avg dividend yield	(2)	(3) Growth rate (''g'')	(4)	(5) Adjusted dividend yield	(6) Estimated cost of equity
		IBES (03/08)	GDP (1/22/08)	Composite		
Spectra Energy Corp	3.65	6	4.43	5.48	3.75	9.23
El Paso Corp	0.96	11	4.43	8.81	1.00	9.81
Oneok Partners, LP	6.66	5	2.22	4.07	6.80	10.87
Boardwalk Pipeline Partners, LP	6.29	6	2.22	4.74	6.44	11.18
Oneok, Inc	3.10	10	4.43	8.14	3.23	11.37
TC Pipelines, LP	7.46	5	2.22	4.07	7.61	11.68
TEPPCO Partners, LP	7.31	6	2.22	4.74	7.48	12.22
Spectra Energy Partners	5.00	10	2.22	7.41	5.18	12.59
Enterprise Products Partners, LP	6.45	8	2.22	6.07	6.64	12.71
Kinder Morgan Energy Partners, LP	6.69	8	2.22	6.07	6.89	12.96
Williams Companies	1.17	16	4.43	12.14	1.24	13.38

Column (1) is taken from individual company analysis.
Column (2) is taken from I/B/E/S Monthly Summary Data, U.S. Edition.
Column (3) is calculated from three sources: BA, Global Insight, and SSA.
Column (4) = Column(2)*⅔ + Column(3)*⅓.
Column (5) = Column(1)*(1 + 0.5*Column(4)).
Column (6) = Column(4) + Column(5).

Note: This Appendix is for illustrative purposes only and does not prejudge what would be an appropriate proxy group for use in individual proceedings.

TABLE 2.—DCF ANALYSIS FOR SELECTED MLPS OWNING JURISDICTIONAL OIL PIPELINES

[Six-month period ended 03/31/2008, in percent]

Company	(1) 6-mos. avg dividend yield	(2)	(3) Growth rate (''g'')	(4)	(5) Adjusted dividend yield	(6) Estimated cost of equity
		IBES (03/08)	50% GDP (1/22/08)	Composite		
Buckeye Partners, LP	6.72	5	2.22	4.07	6.86	10.93
Magellan Midstream Partners, LP	6.16	6	2.22	4.74	6.30	11.04
NuStar Energy, LP	7.07	6	2.22	4.74	7.24	11.98
TEPPCO Partners, LP	7.31	6	2.22	4.74	7.48	12.22
Plains All American Pipelines, LP	6.74	7	2.22	5.41	6.93	12.33
Enbridge Energy Partners, LP	7.58	6	2.22	4.74	7.76	12.50
Enterprise Products Partners, LP	6.45	8	2.22	6.07	6.64	12.71
Kinder Morgan Energy Partners, LP	6.69	8	2.22	6.07	6.89	12.96

Column (1) is taken from individual company analysis.
Column (2) is taken from I/B/E/S Monthly Summary Data, U.S. Edition.
Column (3) is calculated from three sources: BA, Global Insight, and SSA.
Column (4) = Column(2)*⅔ + Column(3)*⅓.
Column (5) = Column(1)*(1 + 0.5*Column(4)).
Column (6) = Column(4) + Column(5).

Note: This Appendix is for illustrative purposes only and does not prejudge what would be an appropriate proxy group for use in individual proceedings.

Appendix B

In this Appendix, we illustrate with a simplified numerical example why a DCF analysis using a proxy MLP's full distribution, including any return of equity, does not lead to the award of an excess ROE in a pipeline rate case or the double recovery of depreciation.

In this example, we compare the results of a DCF analysis for two firms included in a proxy group, one a corporation and the other an MLP. We initially assume that the theoretical basis of the DCF methodology is sound. In other words, the DCF formula will lead to valid results for investors in pricing shares and returns. We further assume that each proxy firm engages only in jurisdictional interstate natural gas pipeline business. Therefore, each proxy firm charges cost-of-service rates determined by the Commission in the proxy firm's last rate case. We also assume that the Commission awarded the same 10 percent ROE to each proxy firm in its last rate case.

Based on these assumptions and the additional facts set forth below illustrating the typical differences between corporations and MLPs, we first set forth the DCF analysis

an investor would perform to determine the value of the corporation's stock and the MLP's limited partner units. We then assume, consistent with the underlying premise of the DCF model, that the results of the investor's DCF analysis represent the actual share prices of the two proxy firms. Using those share prices, we then apply the DCF formula used in rate cases to determine the ROEs of the two proxy firms. As illustrated below, that DCF analysis arrives at the same 10 percent ROE for the proxy MLP, as for the proxy corporation, despite the fact the MLP's distribution includes a return of equity. Thus, the inclusion of return of equity in the MLP's distribution does not improperly distort the rate case DCF analysis.

Assumed Facts

The proxy corporation's rate base is $100. In its last rate case, the Commission awarded the proxy corporation an ROE of 10 percent, and found that its depreciable life is 25 years. So the proxy corporation's cost of service includes $10 for ROE, and $4 for depreciation. We assume that in its most recent year of operations, the corporation actually collected those amounts from its customers, and paid a dividend of $6.50, i.e., a dividend equal to 65 percent of its annual earnings. The corporation thus retains $7.50 in cash flow, which it reinvests the following year. This reflects the fact that corporations typically pay out less than earnings in their dividends. We also assume that the corporation's composite growth rate is 8 percent.

The facts with respect to the MLP are the same, with two exceptions. First, the MLP paid its unit holders a distribution of $13, i.e., a distribution equal to 130 percent of earnings. The remaining $1 is distributed to the general partner of the MLP. Second, the MLP's composite growth rate is only 5 percent.

DCF Analysis of Proxy Corporation

As discussed at P 2 of the notice, an investor uses the following DCF formula to determine share price (with simplifying assumptions):

$D/(ROE - g) = P$

where P is the price of the stock at the relevant time, D is the current dividend, ROE is the discount rate or rate of return, and g is the expected constant growth in dividend income to be reflected in capital appreciation. Using that formula, investors would determine the rational stock price for the proxy corporation as follows:

$6.50 dividend/(ROE of .10 − growth of .08) = Stock Price of $325

That is, investors would sell shares at a price above $325, and buy shares until the price reached $325. In a rate case for another pipeline, the Commission will determine the ROE of the proxy firm by solving the above formula for ROE, instead of share price. This rearranges the formula so that:

$D/P + g = ROE$

Using that formula and assuming the proxy corporation's actual stock price is $325, the Commission would determine the proxy corporation's ROE as follows:

$6.50 dividend/$325 stock price + growth of .08 = ROE of .10

Therefore, if the corporation was included in the proxy group for purposes of determining another firm's ROE in a new rate case, we would find, under the assumed facts, that the proxy corporation has the same 10 percent ROE as we awarded in its last rate case.

DCF Analysis of Proxy MLP

We now go through the same exercise for the proxy MLP to determine whether its distribution in excess of earnings distorts its DCF analysis so as to improperly inflate its ROE. Using the D/ (ROE − g) = P formula described above, investors would determine the proxy MLP's share price as follows:

$13 distribution/ (ROE of .10 − growth of .05) = Share price of $260

Assuming that the actual price of units in the proxy MLP is $260, we now determine the ROE of the proxy MLP, using the DCF formula used in rate cases (D/P + g = ROE). Under that formula, we would calculate the proxy MLP's ROE as follows:

$13 distribution/$260 unit price + growth of .05 = ROE of .10

Therefore, if the MLP was included in the proxy group for purposes of determining another firm's ROE in a new rate case, we would, under the assumed facts, reach the same result as we reached for above proxy corporation: That the proxy MLP has the same 10 percent ROE as we awarded in its last rate case.

By contrast, if the Commission capped the proxy MLP's distribution at its $10 in earnings but continued to use the $260 share price, the ROE calculated for the proxy MLP would be only about 8.8 percent, and thus less than the 10 percent ROE the Commission awarded the proxy MLP in its last rate case and less than the results for the proxy corporation:

$10 distribution/$260 unit price + growth of .05 = ROE of .088

Conclusion

As shown by the above illustrative calculations, an MLP may be included in the proxy group and its full distribution used in the DCF analysis without distorting the results. This is because the level of an MLP's distributions affects both its share price and its projected growth rate. The MLP's inclusion of a return of equity in its distribution causes its share price to be higher than it otherwise would be and its growth rate to be lower. These facts offset the effect of the higher distribution on the DCF calculation of the MLP's ROE. Indeed, capping the MLP's distribution at earnings would lead to a distorted result. This is because there would be mismatch between the market-determined share price, which reflects the actual, higher uncapped distribution, and the lower earnings-capped distribution.

[FR Doc. E8–9186 Filed 4–28–08; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 12478–002]

Gibson Dam Hydroelectric Project, LLC; Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

April 21, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Project—Existing Dam.

b. *Project No.:* 12478–002.

c. *Date Filed:* April 14, 2008.

d. *Applicant:* Gibson Dam Hydroelectric Project, LLC.

e. *Name of Project:* Gibson Dam Hydroelectric Project.

f. *Location:* On the Sun River River, near the Towns of Fairfield and August, Teton and Lewis and Clark Counties, Montana. The project would occupy 132.4 acres of Forest Service lands within the Lewis and Clark National Forest, 15 acres of lands administered by the U.S. Bureau of Reclamation, and 69.9 acres of lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r)

h. *Applicant Contact:* Steven C. Marmon, 3633 Alderwood Avenue, Bellingham, WA 98225, 360–738–9999.

i. *FERC Contact:* Matt Cutlip, 503–552–2762, *matt.cutlip@ferc.gov*

j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (DEA), and (2) comments on the Draft License Application.

k. *Deadline for filing comments:* July 11, 2008.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments and preliminary recommendations, terms and conditions, and prescriptions 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.

l. A copy of the draft 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.

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.

Gibson Dam Hydroelectric Company, LLC has electronically distributed a copy of the Preliminary DEA and Draft License Application to interested entities and parties. Copies of these documents are available for review at the following locations:

Greenfields Irrigation District, 105 W. Central Ave. Fairfield, MT 59436;

Lewis & Clark Library, Augusta Branch, 205 Main Street Augusta, MT 59410;

Choteau Public Library, 17 Main Avenue North, Choteau, MT 59422;

Great Falls Public Library, 301 2nd Avenue North, Great Falls, MT 59401;

Lewis & Clark Public Library, 120 South Last Chance Gulch, Helena, MT 59601; or by calling Steve Marmon at 360–738–9999, or by e-mailing *smarmon@whitewatereng.com.*

m. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9302 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–8–000]

Northwest Pipeline GP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Colorado Hub Connection Project and Request for Comments on Environmental Issues

April 21, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the planned Colorado Hub Connection Project (CHC). This project would involve the construction and operation of about 29 miles of natural gas pipeline and related facilities by Northwest Pipeline GP (NWP) in Rio Blanco County, Colorado. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the planned project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on May 21, 2008. Details on how to submit comments are provided in the ''Public Participation'' section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and to encourage them to comment on their areas of concern.

If you are a landowner receiving this Notice, you may be contacted by a NWP representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline facilities. NWP would seek to negotiate a mutually acceptable agreement to cover the easement, damages that may occur during construction, and any other issues raised by the landowner. The FERC encourages pipeline companies to acquire as much of the right-of-way (ROW) as possible by negotiation with the landowners. If the FERC approves the project, that approval will convey with it the right of eminent domain to secure easements for the facilities. Eminent domain is intended for use when easement negotiations fail to produce an agreement. In such instances, NWP could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

NWP plans to construct and operate the following facilities:

- about 27.5 miles of 24-inch-diameter pipeline lateral, extending from NWP's interstate pipeline system in Douglas Creek south of Rangely on the west to the planned White River Hub and Enterprise Products Operating LLC's (Enterprise) Meeker Gas Processing Plant near Piceance Creek and Meeker on the east;
- interconnections with the White River Hub system, the Enterprise Plant, and NWP's system; and
- appurtenant facilities (including pressure regulation, metering, a mainline valve, and future pig launching/receiving facilities).[1]

The CHC would provide shippers with about 445 million dekatherms of natural gas transportation capacity per day from the planned White River Hub to NWP's mainline system. The general location of the planned facilities is shown in appendix 1.[2]

Land Requirements

Construction of the CHC would disturb about 480 acres overall, including the planned pipeline ROW and three aboveground facility sites (333.5 acres), temporary extra work areas along the ROW (71.4 acres), upgrades to existing access roads (up to 5 acres), and the use of seven existing contractor/pipe storage/rail offloading industrial yards (70.3 acres). Following construction, operation of the planned

[1] A pipeline ''pig'' is a device to clean or inspect the interior of a pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's *Web site* 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 planned facilities should be made directly to NWP.

facilities would permanently affect about 185 acres of land, composed entirely of pipeline ROW and the aboveground facilities at each end of the pipeline. The remaining acreage disturbed during construction would be restored (as closely as practicable) to previous conditions and uses.

NWP would use a 100-foot-wide ROW during construction, but maintain either a 75-foot or 50-foot-wide permanent ROW (on private or federally administered lands, respectively) during facility operation. On the west end of the pipeline in Douglas Creek, the planned Philadelphia Creek Pressure Regulating Station and access drive would require about 0.23 and 0.41 acre, respectively. On the east end near Piceance Creek, interconnections with the Meeker Gas Processing Plant and White River Hub would require a single site (adjacent to the Gas Plant) with a short access road totaling about 1.1 acres of permanent disturbance. The third aboveground facility, a mainline valve (located immediately adjacent to a block valve owned by Enterprise) and short access road, would be sited entirely within the permanent ROW.

The EA Process

We [3] are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA), which requires the FERC to take into account the environmental impact that could result if it authorizes NWP's planned CHC. As the lead federal agency for preparation of the EA, we are asking other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Any agency that would like to request cooperating status should follow the instructions for filing comments provided below. The Department of the Interior's Bureau of Land Management (BLM) has already requested cooperating-agency status and will be assisting us in the scoping, analysis, and preparation of the EA. The EA will be used by both the FERC and the BLM (Agencies) to satisfy our NEPA requirements and support our respective decisions.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice, we are also requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- geology and soils;
- water resources and wetlands;
- land use, recreation, and visual quality;
- cultural resources;
- vegetation and wildlife (including threatened and endangered species and species of special concern);
- air quality and noise;
- reliability and safety.

We will also evaluate possible alternatives to the CHC or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, local libraries and newspapers, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

For this project, we have initiated our NEPA review prior to receiving a formal application from NWP. The purpose of our ''pre-filing'' review process is to involve interested stakeholders early in the project planning, and to identify and resolve issues before an application is filed with the FERC. A pre-filing docket number (PF08–8–000) has been established to place information filed by NWP and related documents issued by the FERC into the public record. Once a formal application is filed with the FERC, a new docket number will be established.

To ensure your comments are received and considered, please carefully follow the instructions in the ''Public Participation'' section below.

Known Environmental Issues

The western end of the planned pipeline terminates within the Canyon Pintado National Register Historic District and adjacent to an associated recreation site. Appropriate consultation and mitigation would be developed to avoid potential impacts.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Agencies. You should focus on the potential environmental effects of the proposal and alternatives to the proposal, including alternative routes and aboveground facility sites, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket No. PF08–8–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 21, 2008.

Please note that the Commission strongly encourages electronic filing of any comments or protests to this proceeding. See Title 18 of the 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 ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your computer's hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' 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.

Environmental Mailing List

As described above, we may publish and distribute the EA for comment. If

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

you are interested in receiving an EA for review and/or comment, please return the Mailing List Return Mailer form (appendix 2). If you do not return the Return Mailer, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

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, then on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.* Any public meetings or site visits scheduled for this proposed project will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, NWP has established an Internet Web site for this project at *http://www.coloradohubconnection.com/.* The Web site includes a project overview, status, and answers to frequently asked questions. You can also request additional information by calling NWP at 1–877–547–5304.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9303 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–731–000; Docket Nos. ER08–632–000, ER08–632–001]

DC Energy Texas, LLC; DC Energy California, LLC; Notice of Issuance of Order

April 22, 2008.

DC Energy Texas, LLC (DC Texas) and DC Energy California, LLC (DC California) filed applications for market-based rate authority, with accompanying rate schedules. The proposed market-based rate schedules provide for the sale of energy, capacity and ancillary services at market-based rates. DC Texas and DC California also requested waivers of various Commission regulations. In particular, DC Texas and DC California requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by DC Texas and DC California.

On April 22, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the request for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by DC Texas and DC California, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is May 22, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, DC Texas and DC California are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of DC Texas and DC California, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of DC Texas' and DC California's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9299 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–149–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

April 21, 2008.

Take notice that on April 15, 2008, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP08–149–00, a prior notice request pursuant to sections 157.205, 157.208, and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate a new point of receipt to receive revaporized liquefied natural gas (LNG) from Kinder Morgan Louisiana Pipeline LLC (KMLP), located in Evangeline Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call

toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Columbia Gulf proposes to design and construct three 20-inch side taps and various appurtenant facilities on its existing Line Nos. 100, 200, and 300, including electronic flow measurement and telemetry, overpressure protection equipment, and approximately 300 feet of interconnecting pipeline of varying size. Columbia Gulf estimates the cost of construction to be $980,000, with all costs associated with the facilities to be reimbursed by KMLP. Columbia Gulf states that the new point of interconnection will provide Columbia Gulf with the ability to receive up to 1,500 MMcf/d of revaporized LNG from KMLP into Columbia Gulf's natural gas pipeline system. Columbia Gulf asserts that the addition of this interconnect will have no significant impact of Columbia Gulf's peak day or annual deliveries.

Any questions regarding the application should be directed to Fredric J. George, Lead Counsel, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

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. E8–9304 Filed 4–28–08; 8:45 am]

BILLING CODE 6717–01–P

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF ENERGY

National Nuclear Security Administration

[PBS-N04]

Finding of No Significant Impact; Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security Administration's Kansas City Plant Environmental Assessment (DOE/EA–1592)

AGENCY: General Services Administration and National Nuclear Security Administration, Department of Energy.

ACTION: Finding of No Significant Impact.

SUMMARY: The General Services Administration (GSA) and the Department of Energy/National Nuclear Security Administration (NNSA) issue this Finding of No Significant Impact (FONSI) on their proposal to relocate certain non-nuclear component production and procurement activities to a smaller, more efficient and flexible facility. This FONSI is based on the General Services Administration/National Nuclear Security Administration ''Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security Administration's Kansas City Plant Environmental Assessment'' (EA), DOE/EA–1592, April 21, 2008. The EA was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. §§ 4321 *et seq.*), regulations implementing NEPA issued by the Council on Environmental Quality (40 C.F.R. Parts 1500—1508), and the NEPA implementing procedures of GSA (ADM 1095.1F) and the Department of Energy (10 C.F.R. Part 1021).

The selected alternative is for GSA to procure the construction of a new facility at the intersection of Botts Road and Missouri Highway 150 in Kansas City, Missouri. GSA would lease the facility on NNSA's behalf, and NNSA would move its operations from the Bannister Federal Complex to the new facility, and conduct production and procurement operations for electrical and mechanical non-nuclear components there (the phrase ''electrical and mechanical'' non-nuclear components, as used in the EA and this FONSI, also includes electronics, electromechanical parts, and engineered materials such as plastics, ceramics, glass, polymers and foams). The NNSA's Kansas City Plant (KCP) performs these activities for NNSA, Department of Energy (DOE) programs, and other federal agencies (''work for others'').

FOR FURTHER INFORMATION CONTACT: Further information, including an electronic copy of the EA, FONSI, Mitigation Action Plan, and other supporting NEPA documents, will be made available on the following Web site: *http://www.gsa.gov/kansascityplan*t. The EA and FONSI will also be made available at: *http://eh.doe.gov/nepa*.

Requests for copies of the EA and FONSI may be sent to: Carlos Salazar, General Services Administration, 1500 East Bannister Road, Room 2191 (6PTA), Kansas City, MO 64131. Requests for copies of the EA and FONSI may also be made by calling (816) 823–2305 or via e-mail to *NNSA—KC@gsa.gov*.

SUPPLEMENTARY INFORMATION: The GSA and NNSA issued a Notice of Intent (NOI) on May 1, 2007 in the **Federal Register** (Vol. 72, No 83, page 23822) informing the public of the proposed action and inviting public comments on the scope of the EA. The NOI also stated that a public scoping meeting would be held in Kansas City, on May 23, 2007. A total of 97 people signed in at the public meeting. Fourteen written comments were submitted and 24 speakers provided comments that were transcribed for the record. Everyone who requested to speak was provided the opportunity to do so. Additional public comments were received by mail and email during the scoping period, which ended on May 30, 2007. Approximately 500 people provided comments during the public scoping process. All comments were considered during the preparation of the draft EA. A copy of the transcript from the scoping meeting is available on the GSA website by following the ''NEPA library'' link (*www.gsa.gov/kansascityplant*).

On December 10, 2007, the GSA and NNSA issued a Notice of Availability (NOA) of the draft EA in the **Federal Register** (Vol. 72, No 236, page 69690) informing the public that the draft EA was available for review and comment. The NOA stated that the deadline for submission of public comments was January 14, 2008. An electronic copy of the draft EA and other supporting documents were posted on the GSA website. An electronic copy of the draft EA was also posted on the DOE website.

On January 14, 2008, the GSA and NNSA notified the public through the website that they were extending the public comment period until January 30, 2008. On January 17, 2008, the federal agencies issued a Notice of Extension of Comment Period in the **Federal Register** (Vol. 73, No 12, page 3256) informing the public of the extension. More than 250 public comments on the draft EA were submitted to GSA and NNSA. After considering all the comments received as a result of the public review process, including those received after the formal comment period closed, GSA and NNSA have made significant revisions to the EA, including the analysis of additional alternatives outside of the Kansas City area (*i.e.* at NNSA's Los Alamos National Laboratory and Sandia National Laboratories in New Mexico and Lawrence Livermore National Laboratory in California).

Because the draft EA only analyzed alternatives in the State of Missouri, in December 2007, the GSA and NNSA specifically requested the State of Missouri to review and comment on the draft EA (although other states had the opportunity to comment through the public comment process). On April 4, 2008, the GSA and NNSA provided a pre-approval review copy of the EA, containing the analysis of additional alternatives outside of the Kansas City area, to the States of Missouri, New Mexico, and California, and requested comments by April 18, 2008. Comments were received by this date from Missouri. These comments were considered in preparing the final EA and FONSI.

Based on the analysis in the EA and after considering all the comments received as a result of the review process, the GSA and NNSA have concluded that no information has been made available that is inconsistent with a finding of no significant impact.

PURPOSE AND NEED: The KCP produces and procures electrical and mechanical non-nuclear components for nuclear weapons; these constitute approximately 85 percent of all the components in a nuclear weapon. As a result of consolidation activities undertaken over the last 15 years by the Department of Energy, the remaining operations at KCP are essential and do not duplicate operations at other sites in the nuclear weapons complex. KCP occupies a large and aging industrial complex in Kansas City located on a site contiguous with GSA facilities. Despite the reductions and consolidations that followed a 1996 decision to downsize KCP's facilities and operations, the current plant is still much larger than NNSA requires, primarily due to continuing reductions in the nuclear weapons stockpile and outsourcing of some fabrication activities. The cost of operating KCP is increasing because of its age and size.

DESCRIPTION OF THE PROPOSED ACTION: NNSA and GSA propose to relocate NNSA's KCP operations to a new facility that NNSA would operate to produce and procure electrical and mechanical non-nuclear components. The proposed facility would be smaller and designed for rapid reconfiguration to improve efficiency and provide flexibility in meeting changing requirements and demands. It would be at least 50% smaller than the current facility, resulting in reduced maintenance and energy costs while improving the responsiveness and facility utilization for the supply of electrical and mechanical non-nuclear components. The proposed action considered in the EA consists of the construction and subsequent operation of such a facility.

Selected Alternative (Alternative 5): The selected alternative is for GSA to procure the construction of a new facility and for NNSA to relocate to and operate the facility for production and procurement of electrical and mechanical non-nuclear components. The new facility would be located on approximately 185 acres at the intersection of Missouri Highway 150 and Botts Road in Kansas City, Missouri, about eight miles south of the existing plant. The proposed facility would cover up to 1.4 million rentable square feet and provide up to 2,900 surface parking spaces (for a total of about 45 acres). GSA has issued a Solicitation for Offers to the real estate development community; the successful developer would partner with GSA and NNSA to design and construct a facility that meets NNSA's needs. GSA would lease the facility on NNSA's behalf and NNSA would move its operations from the Bannister Federal Complex to the new facility and conduct production and procurement operations for electrical and mechanical non-nuclear components there.

Alternatives: In addition to the selected alternative (Alternative 5) and the ''No Action'' Alternative (Alternative 1), which evaluates continuing operations in the existing Kansas City Plant facilities, the EA evaluates the following alternatives:

Alternative 2: Under this alternative, the existing GSA office and warehouse space (Buildings 1 and 2) located on the western portion of the Bannister Federal Complex would be renovated. NNSA's operations would relocate to the renovated facility.

Alternative 3: This alternative consists of renovation of the existing GSA office space (Building 2) and demolition of the existing GSA warehouse (Building 1) and the small outbuildings located north of the existing GSA warehouse. A new manufacturing, laboratory, and warehouse facility would be constructed adjacent to the renovated office space.

Alternative 4: This alternative consists of demolishing the existing GSA office and warehouse spaces (Buildings 1 and 2) and the small outbuildings located north of the existing GSA warehouse. Following demolition, new office and manufacturing facilities would be constructed on GSA's portion of the Bannister Federal Complex.

Alternative 6: This alternative evaluates moving KCP's operations to Sandia National Laboratories in Albuquerque, NM (SNL/NM). For this alternative, two options are evaluated: (1) a new construction option, in which a new facility covering approximately 1.4 million square feet would be constructed and operated similar to the selected alternative; and (2) a reuse/new construction option consisting of existing space in SNL/NM facilities and a smaller new facility.

Alternative 7: This alternative evaluates moving KCP's operations to Lawrence Livermore National Laboratory in Livermore, California. Under this alternative, a new 1.4 million square foot facility would be constructed and operated similar to the selected alternative.

Alternative 8: This alternative evaluates moving KCP's operations to Los Alamos National Laboratory in Los Alamos, New Mexico. For this alternative, two options are evaluated: (1) a new construction option, in which a new 1.4 million square foot facility would be constructed and operates similar to the selected alternative; and (2) a reuse/new construction option consisting of existing facilities and a smaller new facility.

ENVIRONMENTAL CONSEQUENCES OF SELECTED ALTERNATIVE: Based on the analysis in the EA, the selected alternative would not have a significant effect on the human environment within the meaning of NEPA. The term ''significantly'' and the significance criteria are defined by the Council on Environmental Quality (CEQ) regulations for implementing NEPA at 40 C.F.R. § 1508.27.

Beneficial and Adverse Impacts (40 C.F.R. § 1508.27(b)(1)): The selected

alternative would provide a smaller facility designed for rapid reconfiguration to improve efficiency and provide flexibility in meeting changing requirements and demands. Maintenance and energy costs would be reduced, while the responsiveness and facility utilization for the supply of electrical and mechanical non-nuclear components to NNSA would be improved. The analysis indicates that there will not be any significant adverse impacts from implementing the selected alternative (EA Section 5.3).

Public Health and Safety (40 C.F.R. § 1508.27(b)(2)):

Air Emissions (EA Section 5.3.6): During site preparation, construction, and road improvements the use of heavy equipment would generate combustion engine exhaust containing air pollutants associated with diesel combustion (nitrogen oxides (NOx), carbon monoxide (CO), sulfur oxides (SOx), particulate matter less than 10 microns (PM10), and volatile organic compounds (VOCs)). Similar air emissions would be generated from delivery vehicles bringing supplies and equipment to the construction site and from construction workers commuting in their personal vehicles. Emissions from site preparation and construction would be short-term, sporadic, and localized (except for emissions associated with the personal vehicles of construction workers and vehicles transporting construction materials and equipment). The quantities of air pollutants produced by vehicles and equipment associated with construction would not be a substantial contribution to the total emissions from mobile sources already operating in the area and would not adversely affect local air quality.

Construction activities could increase the potential for fugitive dust (*i.e.* airborne particulate matter that escapes from a construction site) from earthwork and other construction vehicle movement. Not all of the area available for construction would be under construction at any one time. Control measures for lowering fugitive dust emissions (i.e. water or chemical dust suppressants) would be implemented to prevent offsite emissions. Construction activities would be in accordance with permits from local, state and federal jurisdictions and would not significantly impact public health and safety.

The total estimated annual air emissions from operating a new NNSA facility at the selected site are expected to be 12.8 tons, consisting of approximately 10.4 tons of NOx, SOx and CO from the boilers and process heaters, 2.0 tons of VOCs from electronic component solvent spray cleaning operations, and 0.4 tons of VOCs from painting operations. This is approximately 28% less than the annual air emissions from the current facility, and would not significantly impact public health and safety.

Noise: At 400 feet from the construction site, construction noise would range from 55–85 dBA. Given that the distance from the site boundary to the nearest business or residence is greater than 400 feet, there would be no significant noise impacts as a result of construction activities, except for a small increase in traffic noise levels from construction employees and material shipments, and short-term increases in noise levels at or near the site boundary from site preparation and infrastructure construction activities such as driveway construction and site grading. Noise from operations is expected to be similar to those from existing operations and would be far enough away from offsite areas that its contribution to offsite noise levels would be small. Noise from the selected alternative would not significantly impact public health and safety (EA Section 5.3.8).

Solid Waste: Waste generation resulting from the selected alternative is not expected to significantly impact public health and safety (EA Section 5.3.5).

Construction activities are expected to generate approximately 6,890 cubic yards of non-hazardous solid waste.

The hazardous waste disposal rate from operations is anticipated to be approximately 26,000 lbs/year, a 30% reduction from current operations at the Bannister Federal Complex due to process improvements and outsourcing. Non-hazardous waste is also expected to experience a similar reduction (to approximately 1.6 million lbs/year) due to the smaller operations and reduced facility refurbishments. Low-level radioactive waste generation is projected to be consistent with current generation rates of approximately 40 lbs per year.

All waste materials would be transported off-site for disposal in accordance with federal, state and local requirements. The number of shipments may be reduced compared to current operations at the Bannister Federal Complex due to the reduction in waste generation.

Groundwater: The proposed facility design does not include the use of underground storage tanks, and all proposed above-ground storage tanks would be constructed with secondary containment. Industrial facilities would be constructed and managed to ensure materials (raw, intermediate and final product, and wastes) and activities are completely sheltered from stormwater. Adverse impacts to groundwater from proposed site operations are not anticipated (EA Section 5.3.2).

Unique characteristics of the geographical area (40 C.F.R. § 1508.27(b)(3)):

Prime Farmland: Though currently used for agricultural purposes, the location of the selected alternative is identified as part of an ''urbanized area'' on Census Bureau maps and is not considered prime farmland (EA Section 5.3.1).

Impact to Wetlands: Based upon a preliminary jurisdictional waters determination, non-jurisdictional wetlands and potential jurisdictional tributaries and wetlands exist onsite. Mitigation of impacts to non-jurisdictional wetlands will take place in accordance with Executive Order 11990, Protection of Wetlands, and to jurisdictional waters in accordance with the Clean Water Act Section 404 permitting process, which requires avoidance of wetlands impacts, minimization of potential impacts on wetlands, and compensation for any remaining unavoidable impacts. A wetland assessment was completed in accordance with the requirements of 10 C.F.R. Part 1022, Compliance with Floodplain and Wetland Environmental Review Requirements, based on a conservative impact scenario.

NNSA found that no practicable alternative to locating the action in the wetland is available. Therefore, the wetland assessment considered specific constraints and provisions for mitigation that will be placed on the developer of the site through both the Section 404 permit and the contract with GSA. Although the actual impacts cannot be precisely quantified until a site plan is finalized, impacts to the site are expected to be less than assessed in this analysis of the conservative scenario.

The contract issued by GSA will require the developer to address the management of any wetlands (jurisdictional and non-jurisdictional) on the site in accordance with Executive Order 11990 and Section 404 permitting. The appropriate federal agency will ensure that mitigation commitments are maintained during operation of the facility.

The GSA submitted a Section 404 permit application to the U.S. Army Corps of Engineers (USACE) on April 1, 2008, based on a conservative impact scenario. Under this scenario, the proposed action would impact, permanently, 0.099 acres (3,655 linear

feet (l.f.)) of intermittent tributaries, 0.097 acres (3,440 l.f.) of ephemeral tributaries, and 1.24 acres of wetlands. In the permit application, a conceptual Mitigation Plan was proposed for the permanently impacted intermittent and ephemeral tributaries (7,095 l.f., 0.2 acres) and the 1.24 acres of permanently impacted wetlands. The features of the plan include:

On-site Stream Mitigation: The credits required to offset impacts would be generated by on-site riparian buffer enhancement of 952 l.f. of intermittent tributary and 494 l.f. of ephemeral tributary. The corridor would be 50–feet wide on each side of the tributaries. Enhancement activities would include nuisance species control, deed restrictions, 10 to 50 percent plantings, native grass seeding, timber thinning, maintenance, and monitoring. The remaining credits would, in part, be done through relocation and restoration of some tributaries and would include in-stream features and minimum 50–foot-wide riparian buffer.

Off-Site Stream Mitigation: Any remaining stream credits would be mitigated for by identifying an off-site mitigation project and/or enrollment into a USACE-approved in-lieu fee program.

Wetland Mitigation: Wetland impacts would be mitigated on-site by 1.24 acres of in-kind wetland creation or restoration. On-site created wetlands would be deed restricted.

Based on the small relative size of the wetlands (less then 1.5 acres combined) and the requirements imposed by the Section 404 permitting process, the impact to wetlands would not be significant (EA Section 5.3.3).

Degree to which the effects on the quality of the human environment are likely to be highly controversial (40 C.F.R. § 1508.27(b)(4)): The analysis in the EA indicates that the selected alternative will result in no significant impacts in the quality of the human environment. The vast majority of public comment focused on nuclear weapons policy and procedural issues. Only a small number of comments were received regarding the potential environmental impacts of the preferred alternative. These comments are addressed in Appendix B, Issue Analysis of Public Comments, including: Issue 16, Workforce Reductions; Issue 11, Stormwater Quality; Issue 12, Air Quality, Issue 13, Health and Safety; Issue 15, Transportation; Issue 16, Hazard Analysis; Issue 18(d), Building 50 Characterization; Issue 18(e), Potential Groundwater Impacts with Onsite Alternatives; and Issue 18(g), Environmental Justice.

Uncertain or unknown risks to the human environment (40 C.F.R. § 1508.27(b)(5)): No chemicals have been identified that would be a risk to members of the public from construction activities associated with a new non-nuclear facility. The KCP is considered a low-hazard industrial facility and operations at the KCP involve hazards of the type and magnitude routinely encountered in industry and generally accepted by the public. Intentional destructive acts at the proposed new facility (e.g. terrorism, internal sabotage) would have a low potential to impact security, public health and safety. There are no uncertain or unknown risks associated with implementing the selected alternative (EA Section 5.3).

Precedent for future actions (40 C.F.R. § 1508.27(b)(6)): The selected alternative does not set a precedent for future actions.

Cumulatively significant impacts (40 C.F.R. § 1508.27(b)(7)): There would be no significant cumulative impacts associated with implementing the selected alternative:

Growth in the area of the preferred alternative site is expected to change the character of the surrounding area from generally open/agricultural with sporadic industrial, to more industrial. This growth has been anticipated and is desired by local and state governments. The selected alternative is consistent with this transition in land use but the proposal would not be a primary, or significant, contributor to the overall change in land use (EA Section 5.3.10).

Commercial development currently ongoing and planned in the area of the selected option will likely result in an increase in daily traffic on Missouri Highway 150 and adjacent roadways, to which the selected alternative would contribute. Due to the small contribution of traffic flow to the area attributed to the selected alternative, the proposed action will not be a primary or significant contributor to the overall change in traffic patterns or road use. Furthermore, the Missouri Department of Transportation and the City of Kansas City, Missouri, are currently working on road improvement projects in the site vicinity which will mitigate the increased projected traffic load resulting from development in the area (EA Section 5.3.10).

Development in the area of the selected alternative may result in an increase of stormwater runoff into the Little Blue River Watershed. For the selected alternative, the City of Kansas City is responsible for stormwater management, planning, and permitting, and all individual developers in the area of the selected site are required by code to mitigate impacts of stormwater runoff and adhere to local building codes for storm drainage systems and facilities. The developer will also be required to incorporate design features to maintain or restore predevelopment hydrology pursuant to Section 438 of the Energy Independence and Security Act of 2007. Cumulative stormwater impacts are not considered to be a significant environmental impact (EA Section 5.3.10).

Effect on historical or cultural resources (40 C.F.R. § 1508.27(b)(8)): A Cultural Resource Assessment did not identify specific areas of concern within the selected site, and no previously recorded archeological sites are located within the project area. In the event that items of archeological significance are found during site excavation, the developer would be directed to stop the excavation in the vicinity of the find and notify the GSA Contracting Officer immediately so that the government can coordinate with the appropriate State Historic Preservation Office officer. The developer would be required to comply with applicable local, state, and federal laws with regard to archeological findings. No adverse impacts to historical or cultural resources are expected as a result of the selected alternative (EA Section 5.3.7).

Effect on endangered or threatened species or critical habitat (40 C.F.R. § 1508.27(b)(9)): The majority of the 185 acres located at the selected site are currently developed for agricultural usage (with scattered stands of trees and vegetated areas). There are no records of species or habitats of federal or state conservation concern within one mile of the site. No threatened or endangered species are known to occupy the site. The selected alternative would not have an effect on threatened or endangered species or critical habitat (EA Section 5.3.4).

Violation of Federal, State, or local law (40 C.F.R. § 1508.27(b)(10)): The selected alternative would not violate any federal, state of local laws imposed for the protection of the environment.

DETERMINATION:

NNSA adopts the EA as a basis for its decision-making.In accordance with the National Environmental Policy Act; GSA Order ADM 1095.1F, implementing the regulations of the Council on Environmental Quality (40 C.F.R. 1500–1508); and DOE's NEPA implementing regulations (10 C.F.R. Part 1021); and based on the analysis in Environmental Assessment DOE/EA—1592, GSA and NNSA find that the Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security

Administration's Kansas City Plant Project is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, the preparation of an Environmental Impact Statement is not required and GSA and NNSA are issuing this FONSI for the Proposed Action.

Key stipulations set forth in the Environmental Assessment include the following measures that will be implemented to reduce any impacts the selected alternative may have on the quality of the human environment: Adherence to commitments outlined in the Mitigation Action Plan. The Mitigation Action Plan contains mitigation and monitoring commitments for the project, including commitments set (or that would be set) in any permits. As details of specific mitigation actions are developed, or as additional mitigation measures necessary to produce the results committed to by GSA or NNSA are identified, the Mitigation Action Plan will be updated.

General Services Adminstration:

APPROVED BY:

Dated: April 21, 2008.

Bradley M. Scott,

Regional Administrator, GSA Region 6.

and

Dated: April 21, 2008.

Steve C. Taylor,

Manager, NNSA, Kansas City Site Office.

[FR Doc. E8–9322 Filed 4–28–08; 8:45 am]

BILLING CODE 6820–CG–S

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project-Rate Order No. WAPA–138

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Formula Rates for Firm Electric and Transmission Service.

SUMMARY: The Western Area Power Administration (Western) is proposing modifications to the rate methodology used to develop Parker-Davis Project (P–DP) firm electric and transmission service formula rates. The modifications to the rate methodology will change the allocation factors used to apportion certain expenses between generation and transmission revenue requirements. The firm electric and transmission service rates resulting from the rate methodology modifications are equal to current rates and will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. Western is also proposing changes to the current billing practices for P–DP long-term firm transmission service. Under the proposed billing changes, customers will be required to pay for long-term firm transmission service one month in advance of service. Western will prepare a brochure that provides detailed information on the modifications and proposed firm electric and transmission service formula rates. Current formula rates under Rate Schedules PD–F6, PD–FT6, PD–FCT6, and PD–NFT6 expire September 30, 2008. The proposed formula rates under Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 are scheduled to become effective on October 1, 2008, and will remain in effect through September 30, 2013. Publication of this **Federal Register** notice begins the formal process for the proposed formula rates.

DATES: The consultation and comment period will begin today and will end May 29, 2008. Western will accept written comments any time during the consultation and comment period. The proposed action constitutes a minor rate adjustment as defined by 10 CFR part 903. As such, Western has determined it is not necessary to hold a public information or public comment forum.

ADDRESSES: Send written comments to: J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/RateAdjust/Main.htm.* Western will post official comments received via letter, fax, and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: Under the current rate methodology, formula rates for P–DP firm electric and transmission service are recalculated annually and designed to recover annual project costs, including interest expense, and make repayment of required investment within the allowable period. Costs that are readily identifiable as supporting either generation or transmission functions are directly allocated to generation or transmission revenue requirements. All other costs are apportioned between generation and transmission revenue requirements based on cost allocation factors. Current cost allocation factors include Supervisory Control and Data Acquisition, Capitalized Movable Equipment (CME), labor hours devoted to billing, and historic project investment. Western is proposing to modify the current rate methodology by eliminating the CME, labor hours devoted to billing, and historic project investment cost allocation factors. Western also proposes implementing a cost allocation factor that is the ratio of the number of customers receiving firm electric or transmission service to the total number of customers. At this time, the firm electric and transmission service rates resulting from the proposed modifications to the rate methodology are equal to current rates and will provide sufficient revenue to recover generation and transmission revenue requirements.

During informal discussions prior to the commencement of this rate adjustment process, Western received a request from customers to modify the billing practices for P–DP long-term firm transmission service. In the request, the customers noted that payments for firm electric service are required one month in advance of service and suggested that all parties be subject to the same billing terms and conditions. Current billing practices for P–DP long-term firm transmission service allow customers to pay after the fact, usually one month after service is provided. In response to this request, Western is proposing changes to billing practices so that customers will be required to pay for P–DP long-term firm transmission service one month in advance of service. This requirement is incorporated into Rate Schedule PD–FT7.

Rate Schedules PD–F6, PD–FT6, PD–FCT6, and PD–NFT6 were approved under Rate Order No. WAPA–75 for the period beginning November 1, 1997, and ending September 30, 2002.[1] These rate schedules were extended through September 30, 2004, by the approval of Rate Order No. WAPA–98 on September

[1] WAPA–75 was approved by the Deputy Secretary of Energy on November 18, 1997 (62 FR 63150), and confirmed and approved by FERC on a final basis on March 10, 1998, in Docket No. EF98–5041–000 (82 FERC 62164).

13, 2002.[2] These rate schedules were extended again through September 30, 2006, by the approval of Rate Order No. WAPA–113 approved on September 2, 2004.[3] These rate schedules were extended again through September 30, 2008, by Rate Order No. WAPA–131 approved on September 22, 2006.[4]

Legal Authority

The proposed modifications to the rate methodology described above constitutes a minor rate adjustment. Western has determined that it is not necessary to hold a public information or public comment forum for this proposed minor rate adjustment as defined by 10 CFR part 903. After review of public comments and possible amendments or adjustments, Western will recommend the Deputy Secretary of Energy approve the proposed formula rates on an interim basis.

Western is establishing firm electric and transmission service rates for P–DP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office located at 615 South 43rd Avenue, Phoenix, AZ. Many of these documents and supporting information are also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/RateAdjust/Main.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–9332 Filed 4–28–08; 8:45 am]

BILLING CODE 6450–01–P

[2] WAPA–98 was approved by the Secretary of Energy on September 13, 2002 (67 FR 60655), and filed with FERC for informational purposes only, and docketed by FERC on September 24, 2002, in Docket No. EF02–5041–000.

[3] WAPA–113 was approved by the Deputy Secretary of Energy on September 2, 2004 (69 FR 55429), and filed with FERC for informational purposes only, and docketed by FERC on September 3, 2004, in Docket No. EF04–5042–000.

[4] WAPA–131 was approved by the Deputy Secretary of Energy on September 22, 2006 (71 FR 57941), and filed with FERC for informational purposes only, and docketed by FERC on September 22, 2006, in Docket No. EF06–5042–000.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–QAR–2008–0222; FRL–8558–1]

Agency Information Collection Activities: Submissions for OMB Review; Comment Request; Proposed Collection and Comment Request for the Outer Continental Shelf Air Regulation; EPA ICR No. 1601.07; OMB Control No. 2060–0249

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 30, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0222, by one of the following methods:*http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Agency Information Collection Request Activities: Proposed Collection and Comment Request for the Outer Continental Shelf Air Regulations Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0222. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Agency Information Collection Request Activities: Proposed Collection and Comment Request for the Outer Continental Shelf Air Regulations 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 Air Docket is (202) 566–1742. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.eps.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Shao-Hang Chu, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C539–04) , Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5382; fax number: (919) 541–0824; e-mail address: *chu_shao-hang@epagov*.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity does this apply to?

Affected Entities: Entities potentially affected by this action are all outer continental shelf sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). For sources located within 25 miles of states' seaward boundaries, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area (COA). In states affected by this rule, state boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where the state's boundary extends three leagues (about nine miles) from the coastline.

Title: Outer Continental Shelf Air Regulations, EPA ICR Number 1601.07 and OMB Control Number 2060.0249, expiration date: January 31, 2009.

Abstract: Sources located beyond 25 miles of states' boundaries are subject to Federal requirements (implemented and enforced solely by EPA) for Prevention of Significant Deterioration, New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants Standards, the Federal operating permit program, and the enhanced compliance and monitoring regulations. Before any agency, department, or instrumentality of the Federal Government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. Depending on the type of action, the Federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the state's seaward boundaries as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the COA. State and local air pollution control agencies are usually requested to provide information concerning regulation of offshore sources and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

Burden Statement: Burden means the total time; effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 549 hours per response. The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Total Number of Potential Respondents: 49.

Estimated Number of Responses: 62.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 34,038.

Estimated Total Annual Costs: $1,858,350, which includes $0 annualized capital startup costs, $17,886 O&M costs, and$1,840,064 in annual labor costs.

III. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as

appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 17, 2008.

Jenny N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E8–8960 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: April 30, 2008—9:30 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Part of the Meeting will be held in Open Session and the remainder of the meeting will be held in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. FMC Meetings Processes/ Procedures.
2. 2007 Annual Employee Survey.
3. OIG Semiannual Report to the Congress covering the period October 1, 2007—March 31, 2008.
4. Docket No. 06–05—*Verucci Motorcycles LLC* v. *Senator International Ocean LLC*

Closed Session

1. Internal Administrative Practices and Personnel Matters.
2. Direction to Staff Regarding Budget Hearing Committee Requests.
3. FMC Agreement No. 201178—Los Angeles/Long Beach Port ITerminal Operator Administration and Implementation Agreement.

Contact Person For More Information: Karen V. Gregory, Assistant Secretary, (202) 523–5725.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–9280 Filed 4–28–08; 8:45 am]

BILLING CODE 6730–01–M

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 website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 2008.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Integrity Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Integrity Bank, both of Camp Hill, Pennsylvania.

B. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Whitaker Bank Corporation of Kentucky, Lexington, Kentucky; to acquire 100 percent of the voting shares of State Financial Services, Inc., and thereby indirectly acquire voting shares of State Bank and Trust, both of Harrodsburg, Kentucky.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Twin Lakes Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Twin Lakes Community Bank, both of Flippin, Arkansas, and Bank of Salem, Salem, Arkansas.

2. First National Corporation of Wynne, Wynne, Arkansas; to acquire 35 percent of the voting shares of Twin Lakes Bancshares, Inc., and thereby indirectly retain voting shares of Twin Lakes Community Bank, both of Flippin, Arkansas, and also indirectly acquire voting shares of Bank of Salem, Salem, Arkansas.

Board of Governors of the Federal Reserve System, April 23, 2008.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc.E8–9241 Filed 4–28–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Voluntary Testing and Enrollment for a New Method of Submitting Applications, Notices, and Other Requests for Regulatory Authorization

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Federal Reserve) proposes to implement an electronic system for the submission of applications, notices, and other requests for regulatory authorization to the Federal Reserve System by insured depository institutions, bank holding companies (BHCs), foreign banking organizations (FBOs), other entities, individuals, or groups (collectively, filers) under the Federal Reserve Act, Bank Holding Company Act, Bank Merger Act, Change in Bank Control Act, the International Banking Act of 1978, and the Federal Reserve's regulations implementing these statutes. As a part of this process the Federal Reserve would implement an authentication system to authorize filers and their designated agents to access the Electronic Applications system (E-Apps) and submit filings. To identify any unresolved issues with (E-Apps), the Federal Reserve proposes to establish a testing program involving a limited number of filers that would be willing to provide written and oral feedback regarding the authentication and testing processes.

DATES: *Pilot Phase Timeframe:* Second and Third Quarters 2008.

System Enrollment and Implementation Phase Timeframe: Beginning Fourth Quarter 2008.

FOR FURTHER INFORMATION CONTACT: Michael Sexton, Manager (202–452–3009) or Vaishali Sack, Supervisory Financial Analyst (202–452–5221), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System; Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve is developing an electronic system for the submission of applications, notices, and other requests for regulatory authorization (collectively, filings) by filers to the Federal Reserve. The Government Paperwork Elimination Act of 1998 (GPEA) generally requires federal executive agencies to use electronic forms and electronic filings to conduct official business with the public when practicable. The Federal Reserve, which complies with GPEA, has elected to provide a web-based system for the electronic submission of filings, in order to reduce substantially the Federal Reserve's reliance on its current, paper-based submission processes. This electronic system, E-Apps, is currently under development.

Although the use of E-Apps would be voluntary for filers, the Federal Reserve anticipates that the electronic submission of filings through E-Apps would reduce the burden filers experience with current requirements for paper-based submissions. Therefore, filers who voluntarily choose to submit filings through E-Apps would save the time and expense associated with photocopying and mailing or otherwise filing copies.

In order to provide sufficient assurances of authentication, data integrity, data confidentiality and non-repudiation, and sufficient security for the information transmitted in filed documents, filers and their designated agents must be authenticated to access E-Apps and submit filings to the Federal Reserve. Filers or their designated representatives (employees or agents) who elect to submit filings through E-Apps will be required to first obtain digital certificates from the Federal Reserve. The process for requesting certificates will be similar to the process currently in place for using certain financial services provided by the Federal Reserve. Information, forms, and instructions regarding the certificate request process will be available on the Federal Reserve's public Web site (*http://www.federalreserve.gov/*).

II. Testing and Enrollment

This notice announces the voluntary testing and mandatory enrollment for E-Apps. Enrollment is mandatory only if the filer elects to use the E-Apps system. As discussed below, the testing and enrollment will be conducted in two phases: The Pilot phase and the System Enrollment and Implementation phase. The Federal Reserve anticipates that the phases will be conducted according to the following schedule: The Pilot phase would be conducted for approximately two months during the second quarter of 2008. The System Enrollment and Implementation phase would begin in the fourth quarter of 2008 with Enrollment and continue with Implementation beginning in the first quarter of 2009.

As part of the testing, each participating filer would be expected to enroll in E-Apps. The Federal Reserve would issue digital certificates to properly documented subscribers.

- *Pilot Phase:* This phase would begin approximately in June 2008 and would be conducted for two months. The Pilot phase would include approximately twenty filers and subscribers (individuals who are authorized to submit filings on behalf of filers) as voluntary participants. Participants in the Pilot phase would access the E-Apps system and would submit at least one filing through the E-Apps system on behalf of each filer.

The Federal Reserve would distribute filing instructions to each participating filer and subscriber and provide assistance as necessary. Pilot phase participants would be asked to provide written and oral feedback regarding the certificate and filing processes, the E-Apps system, and any customer support they receive during the Pilot phase. The comments and recommendations received from the participants would be analyzed to identify issues. The Pilot phase, along with the feedback, would help the Federal Reserve identify any unresolved issues with the E-Apps system before the System Enrollment and Implementation Timeframe.

- *System Enrollment and Implementation Phase:* Enrollment in the E-Apps System would be available for all filers and their designated representatives (employees or agents) beginning in the fourth quarter of 2008, and would be mandatory for filers who want to submit filings to the Federal Reserve through E-Apps. Filers and subscribers that participated in the Pilot phase would be able to submit filings using the certificates previously issued to them. All other filers and their designated representatives would be required to submit the appropriate paperwork and follow the digital certificate request procedures outlined above. Implementation of the E-Apps System would begin in the first quarter of 2009.

Board of Governors of the Federal Reserve System, April 24, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–9326 Filed 4–28–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan.

OMB No.: 0970–0075.

Description: States, including the District of Columbia, Tribes, tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every 3 years. Abbreviated applications may be submitted in alternate years. There have been no changes in the Model Plan.

Respondents: State Governments, Tribal Governments, Insular Areas, the District of Columbia, and the Commonwealth of Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38

Estimated Total Annual Burden Hours 103.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 23, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–9278 Filed 4–28–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Adoption and Foster Care Analysis and Reporting System for title IV–B and title IV–E.

OMB No.: 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act (the Act) directs States to establish and implement an adoption and foster care reporting system. Federal regulations at 45 CFR 1355.40 sets forth the requirements of section 479 of the Social Security Act for the collection of uniform, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement, care, and adoption. The respondents are child welfare agencies in the 50 States, the District of Columbia, and Puerto Rico. The data collected will inform State/Federal policy decisions, program management, and responses to Congressional and Departmental inquiries. Specifically, the data are used for short/long-term budget projections, trend analysis, child and family service reviews, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: State Child Welfare Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
AFCARS	52	2	3,005	312,513

Estimated Total Annual Burden Hours: 312,513.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 23, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–9293 Filed 4–28–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of meeting place.

SUMMARY: The Health Resources and Services Administration published a meeting notice for the National Advisory Council on Migrant in the **Federal Register** of April 2, 2008 (73 FR 17991). The meeting place has changed.

Correction

In the **Federal Register** issue of April 2, 2008, (73 FR 17991), 1st column, change the meeting place to:

Place: Holiday Inn San Juan, 8020 Tartak Street, Isla Verde, PR 00979, Telephone: (787) 625–9000, Fax: (787) 253–9007.

Dated: April 23, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–9333 Filed 4–28–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Behavioral Health Preventive Care Assessment Focus Group Guide

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–NEW, ''Behavioral Health Preventive Care Assessment Focus Group Guide.'' *Type of Information Collection Request:* Three-year approval of this new information collection, 0917–NEW, ''Behavioral Health Preventive Care Assessment Focus Group Guide.'' *Form(s):* None. *Need and Use of Information Collection:* The IHS goal is to raise the health status of the American Indian and Alaska Native people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, IHS uses the Government Performance Act (GPRA) to assess quality of care among its Federal, Urban, and Tribal health programs. The IHS has been largely successful in meeting GPRA targets for selected clinical performance measures at the national level. However, there is significant variability in performance among IHS and Tribal service units.

Until this time, IHS has not undertaken any comprehensive studies to evaluate the reasons for that variability or the factors that contribute to high quality care at the local level. The IHS has three GPRA measures relating to behavioral health, a high priority for the Agency and one of the IHS Director's Initiatives. This study will focus on these three GPRA behavioral health measures: Depression Screening in adults age 18 and over, Domestic/Intimate Partner Violence screening in women ages 14–15, and Alcohol Screening (to prevent Fetal Alcohol Syndrome) in women ages 15–44.

Tribal programs voluntarily report their GPRA results quarterly and annually for national reporting. GPRA data collected for these three behavioral health measures includes: the number of patients eligible for a screening (denominator), number of eligible patients who receive a screening (numerator), and the resulting screening rate (percentage). IHS has developed a methodology to identify superior and poor performers on these measures in both Tribal and Federal sites using fiscal year 2005, 2006, and 2007 GPRA performance results.

IHS will convene focus groups with employees at 17 of these programs (7 IHS and 10 Tribal) in order to identify the factors contributing to (and when appropriate, the barriers preventing) the provision of high quality behavioral health care at the local level. These focus groups will allow employees to provide detailed data regarding program practices, screening and documentation procedures, initiatives, resources, and other factors relating to the provision of behavioral health preventive care at their health program. A total of two to three focus groups, organized by occupational specialty, will be convened at each program.

Using the Chronic Care Model and Institute of Medicine recommendations, IHS will analyze the information collected during these site visits, along with background information that is publicly available (e.g., information found on clinic web pages), on other qualitative and quantitative features of individual programs, such as staffing and funding levels, community demographics, and organizational structure, to develop a behavioral health preventive care model relevant to the unique system of IHS delivery. *Affected Public:* Individuals. *Type of Respondents:* Tribal employees at Tribal health programs.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response *	Annual burden hours
Administrators/Supervisor Focus Group Guide	30	1	30	2	60
Provider Focus Group Guide	30	1	30	2	60
Behavioral Health Provider Focus Group Guide	15	1	15	2	30
Data Entry Focus Group Guide	15	1	15	2	30
Total	90				180

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data

collection instrument(s) and instructions to: Ms. Chris Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP 450, Rockville, MD 20852–1627; call non-toll free (301) 443–5938; send via facsimile to (301) 594–0899; or send your e-mail requests, comments, and return address to: *Christina.Rouleau@ihs.gov*.

Comment Due Date: Comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: April 18, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. E8–9258 Filed 4–28–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program Negotiation Cooperative Agreement; Correction

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** (FR) on March 31, 2008. The document contained three errors.

FOR FURTHER INFORMATION CONTACT: Matt Johnson, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Telephone (301) 443–1982. (This is not a toll-free number.)

Correction

In the **Federal Register** of March 31, 2008, in FR Doc. E8–6428, on page 16871, in the second column, under III. Eligibility Information, 3. Other Requirements, Letter C., change Friday April 25, 2008 to Tuesday, May 6, 2008, and in the following sentence change April 25, 2008 to May 6, 2008; and on page 16874, in the second column, first paragraph, change *matthew.johnson@ihs,gov* to *matthew.johnson@ihs.gov*.

Dated: April 18, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. E8–9250 Filed 4–28–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program Planning Cooperative Agreement; Correction

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** (FR) on March 31, 2008. The document contained four errors.

FOR FURTHER INFORMATION CONTACT: Matt Johnson, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Telephone (301) 443–1982. (This is not a toll-free number.)

Correction

In the **Federal Register** of March 31, 2008, in FR Doc. E8–6406, on page 16874, in the second column, correct the Funding Announcement Number to read: HHS–2008–IHS–TSGP–0002; page 16875, in the first column, Under III. Eligibility Information, 3. Other Requirements, Letter B., change Friday April 25, 2008 to Tuesday, May 6, 2008, and in the following sentence change April 25, 2008 to May 6, 2008; and on page 16878, in the first column, first paragraph, change *matthew.johiison@ihs.gov* to *matthew.johnson@ihs.gov*.

Dated: April 18, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. E8–9246 Filed 4–28–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Assay for Identification of Influenza-Neutralizing Antibodies

Description of Technology: Development of effective vaccines against influenza, especially pandemic or avian, is a subject of intense current research efforts. The efficacy of these vaccines has historically been assessed using hemagglutination inhibition (HAI) assays. However, HAI assays are limited in their utility by lack of standardization amongst laboratories. The NIH is pleased to offer the subject technology, a system to quantitate virus neutralization and entry. This system utilizes pseudotyped lentiviral vectors that mimic properties of the influenza virus. Experimental use of this system has shown an increase in sensitivity more than ten times that achieved with HAI assays. This standardized system can allow influenza vaccine candidates to be evaluated and compared, which can be a critical step in identifying the best product forward.

Applications: Quick, high-throughput, sensitive and quantitative measure of neutralizing antibodies for vaccine development; Identification of therapeutic monoclonal antibodies.

Advantages: Standardized assay, unlike currently utilized assays; Generation of comparable data for various vaccine candidates.

Development Status: Comparative data against current standard available.

Inventors: Gary Nabel and Zhi-yong Yang (NIAID).

Patent Status: U.S. Provisional Application No. 60/993,378 filed 11 Sept 2007 (HHS Reference No. E–323–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301–435–5515; *anos@mail.nih.gov.*

Influenza Vaccines, Therapeutics, and Monoclonal Antibodies

Description of Technology: Concerns about a potential influenza pandemic and its prevention are a regular part of health news, with bird (avian) influenza (prominently including H5N1 strains) being a major concern. Vaccination is one of the most effective ways to

minimize suffering and death from influenza. Currently, there is not an effective way to vaccinate against avian influenza without knowing what subtype and strain will circulate. Described here are two technologies with application to development of vaccines against influenza as well as therapeutics and monoclonal antibodies. One technology provides for development of potentially broadly protective influenza vaccines, while the other seeks to improve immune response to the vaccine through increased receptor affinity.

The first technology offers candidate DNA vaccines that were primarily designed to elicit neutralizing antibodies to target H5N1, H1N1, H3N2 and other subtypes of influenza. The candidate vaccines express H/HA or neuramidase (N/NA) protein that has been codon optimized and/or modified at the protease cleavage site. The modified genes could be used in DNA vaccines, in viral vectors, recombinant proteins/particles or combination. Exemplary animal studies use proprietary expression systems that increase protein expression relative to commonly used alternatives. This invention potentially provides a vaccine strategy for controlling influenza epidemics, including avian flu, should it cross over to humans; the 1918 strain of flu; and seasonal flu strains. In addition, this invention is designed to lead to a combination vaccine to provide a broadly protective vaccine.

The second technology relates to H5N1 influenza vaccine candidates in which mutations have been introduced to increase affinity of the hemagglutinin (H or HA) for the sialic acid receptor found in humans, which have a different sialic acid linkage than the corresponding avian receptor. These mutations could therefore result in a higher immune response in vaccines, producing a more robust response than other H5N1 vaccine candidates that retain their avian receptor preferences. These mutations also changed antibody-sensitivity of the vaccine candidates. The H5 modifications can be expressed from DNA or adenoviral vectors, or the proteins themselves can be administered. Additionally, these mutated HAs can be used to develop therapeutic monoclonal antibodies. The technology describes three (3) unique monoclonal antibodies that react with wild-type H5, wild-type H5 and mutant HA equivalently, and the mutant HA, respectively.

Applications and Advantages: Influenza vaccine for pandemic or epidemic application; Therapeutic antibodies; Potential for combination vaccine for broad protection, removing need for seasonal strain monitoring; DNA vaccines are easy to produce and store; No risk of reversion to pathogenic strain as with live-attenuated virus vaccines.

Development Status Highlights: Phase I clinical trial active for DNA vaccine candidate encoding H5, Indonesian strain (VRC–AVIDNA–036–00VP); Animal (mouse) data available; Codon optimized for expression in human cells.

Publications:

1. Certain aspects of this technology were published in: WP Kong *et al.* Protective immunity to lethal challenge of the 1918 pandemic influenza virus by vaccination. Proc Natl Acad Sci USA. 2006 Oct 24;103(43):15987–15991.

2. GJ Nabel. Gene-based influenza vaccines: a look to the future. Presentation to World Health Organization (WHO), February 2007; available online at *http://www.who.int/vaccine_research/diseases/influenza/160207_Nabel.pdf*.

Inventors: Gary J. Nabel *et al.* (VRC/NIAID).

Patent Status:

PCT patent application, serial number PCT/US2007/004506 (publication number WO 2007/100584), filed 16 Feb 2007 with priority to 16 Feb 2006 (HHS Reference No. E–116–2006/1–PCT–01).

PCT patent application, serial number PCT/US2007/081002, filed 10 Oct 2007 with priority to 10 Oct 2006 (HHS Reference No. E–306–2006/4–PCT–01).

Related Technology: U.S. Patent No. 7,094,598 issued 22 Aug 2006 (HHS Reference No. E–241–2001/1–US–01) and associated foreign rights (proprietary expression system with CMV/R promoter).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Polypeptides for Eliciting Neutralizing Antibodies Against HIV

Description of Technology: The technology describes conjugate polypeptide compositions that are designed to elicit antibody response against HIV. The peptides are conjugates of one gp41 capable of forming a stable coiled-coil structure and another gp41 capable of forming an alpha-helical structure. These structural elements of gp41 were identified as important for playing a role in HIV–1 cell entry. Compositions that elicit neutralizing antibodies against HIV have been elusive to date, but the subject technology may be important in realizing that goal.

Applications: HIV vaccines; Neutralizing antibodies against HIV.

Development Status: Animal (rabbit and/or guinea pig) data available.

Inventors: Carol Weiss (FDA).

Patent Status: U.S. Patent 7,311,916 issued 28 Dec 2007 (HHS Reference No. E–212–2001/0–US–11).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The FDA/CBER Laboratory of Immunology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Carol Weiss at *carol.weiss@fda.hhs.gov* for more information.

Dated: April 21, 2008.

David Sadowski,

Deputy Director,Division of Technology Development and Transfer,Office of Technology Transfer,National Institutes of Health.

[FR Doc. E8–9257 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–P

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 Neurobiology of Learning and Memory Study Section, June 5, 2008, 8 a.m. to June 6, 2008, 5 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC, 20037 which was published in the **Federal Register** on April 4, 2008, 73 FR 18539–18542.

The meeting will be held one day only June 6, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9158 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

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 Integrative Physiology of Obesity and Diabetes Study Section, May 29, 2008, 8 a.m., to May 30, 2008, 3 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on April 16, 2008, 73 FR 20696–20698.

The meeting will be held one day only, May 29, 2008, from 8 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9160 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group,Cognitive Neuroscience Study Section.

Date: May 27, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue,Bethesda, MD 20814.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 5178, MSC 7844,Bethesda, MD 20892,301–435–1249, *finkelsj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group,Molecular Neuropharmacology and Signaling Study Section.

Date: May 29, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jurys Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Deborah L. Lewis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health,6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301–435–1224, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *Member Conflict:* Biological Rhythms and Sleep.

Date: May 29, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 5095C, MSC 7844,Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, The Brain Disorders and Clinical NeuroscienceMember Conflict.

Date: May 29, 2008.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Virtual Meeting).

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral And Skin SciencesIntegrated Review GroupSkeletal Biology Development and Disease Study Section.

Date: June 1–3, 2008.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel,1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 4104, MSC 7814,Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neural Drug Discovery.

Date: June 2, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301)435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN–N (02) M: Member Conflict Special Emphasis Panel.

Date: June 2, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Virtual Meeting).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: June 3–4, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Barbara J. Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, S1O Study Section Panel.

Date: June 4–5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Virtual Meeting).

Contact Person: Jonathan Arias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840,Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *RFA–HD–07–1 01:* Evaluating the Health Benefits of Workplace Policies/Practices Phase II.

Date: June 4, 2008.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Virtual Meeting).

Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770,Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision Technologies.

Date: June 4, 2008.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846,Bethesda, MD 20892, 301–435–1049, *mckiegeo@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Clinical and Integrative Cardiovascular Sciences Study Section.

Date: June 5–6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Russell T. Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814,Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel BTSS Member Conflict.

Date: June 6, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854,Bethesda, MD 20892, (301) 435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NIH Rapid Access to Interventional Development Pilot Review.

Date: June 10–11, 2008.

Time: 6 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892(Virtual Meeting).

Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7844,Bethesda, MD 20892, 301–435–2417, *lijames@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

Date: June 11–12, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications,

Place: Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806,Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group,Risk, Prevention and Intervention for Addictions Study Section.

Date: June 11–12, 2008.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Arts Club of Washington, 2017 I Street, NW., Washington, DC 20006.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7808,Bethesda, MD 20892, 301–451–9956, *gboyd@mail.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Computing and Health Informatics Study Section.

Date: June 12, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854,Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Neural Systems Study Section.

Date: June 12, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Administrator,Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 4040–A, MSC 7850,Bethesda, MD 20892,301–435–1235,*geoffreys@csr.nih.gov.*

Agenda: To review and evaluate grant applications.

Name of Committee: Infectious Diseases and MicrobiologyIntegrated Review Group, Host Interactions with Bacterial Pathogens Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Marian Wachtel, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 3208, MSC 7858,Bethesda, MD 20892,301–435–1148,*wachtelm@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral And Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.

Date: June 12–13, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 4110, MSC 7814,Bethesda, MD 20892,301–435–6809,*bartletr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Surgical Sciences, Biomedical Imaging and BioengineeringIntegrated Review Group.

Date: June 12,2008.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bill Bunnag, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 5124, MSC 7854,Bethesda, MD 20892, (301) 435–1177,*bunnagb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.

Date: June 13–14, 2008.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Syed M. Amir, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 6172, MSC 7892,Bethesda, MD 20892,301–435–1043, *amirs@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section,

Date: June 13, 2008,

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn.824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Ann Hardy, DRPH, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 3158, MSC 7770,Bethesda, MD 20892, (301) 435–0695,*hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–07–018: Health Literacy.

Date: June 13, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Karen Lechter, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 3128,

MSC 7759,Bethesda, MD 20892,301–496–0726,*lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SMEP Overflow and Skeletal Muscle Small Business Applications.

Date: June 13, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Officer, Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 4110, MSC 7814,Bethesda, MD 20892,301–435–6809,*bartletr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 22, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9284 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Cancer Epidemiology.

Date: June 19–20, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9287 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group; Comparative Medicine Review Committee; CMRC—Parent Meeting 2008.

Date: June 5, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John R. Glowa, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, Msc 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; Biotechnology Review 2008.

Date: June 11–12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Steven Birken, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, Msc 4874, Bethesda, MD 20892–4874, 301–435–0815, *birkens@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; Southwest NPRC.

Date: June 23–25, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel San Antonio, 37 NE Loop 410, San Anotnio, TX.

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review,National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Dem. Plaza, Room 1076, Bethesda, MD 20892, 301–435–0814, *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; RCMI Special Emphasis Panel.

Date: June 26, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., Room 1084, MSC 4874, 1 Democracy Plaza, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: April 22, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9275 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; LRP Teleconference.

Date: May 8, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: Keith Mckenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 22, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9276 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Review of AA–3 Member Conflict Applications.

Date: July 29, 2008.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, 3039, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM 3039, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.89 1 Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9152 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of Applications on Alcohol, Liver Injury, Anti-Retroviral Therapy in HIV/HCV (RFA AA O8–013/14).

Date: July 28, 2008.

Time: 1:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PHD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9154 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel. Review of AA–1 Member Conflict Applications.

Date: July 17, 2008.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, 3039, Rockville, MD 30852 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PHD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs;

93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9156 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; PREDICT.

Date: May 16, 2008

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard,Rockville, MD 20852(Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities,National Institute of Mental Health,National Institutes of Health,6001 Executive Blvd., Room 6154, MSC 9609,Bethesda, MD 20892–9606,301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Prefrontal cortex RFA review panel.

Date: May 20, 2008.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard,Rockville, MD 20852(Telephone Conference Call).

Contact Person: Megan Libbey, PhD, Scientific Review Administrator, Division of Extramural Activities,National Institute of Mental Health, NIH,Neuroscience Center,6001 Executive Blvd., Room 6148, MSC 9609,Rockville, MD 20852,301–402–6807, *libbeymmail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Eating Disorder Interventions.

Date: May 28, 2008.

Time: 3:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard,Rockville, MD 20852(Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities,National Institute of Mental Health,National Institutes of Health,6001 Executive Blvd., Room 6154, MSC 9609,Bethesda, MD 20892–9606,301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Insomnia Treatment.

Date: June 27, 2008.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard,Rockville, MD 20852(Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities,National Institute of Mental Health,National Institutes of Health,6001 Executive Blvd., Room 6154, MSC 9609,Bethesda, MD 20892–9606,301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9162 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R21s.

Date: June 4, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, NIDCR,45 Center Drive, 4AN–24E,Bethesda, MD 20892,301–594–4859, *horsforj@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: June 16, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer NIDCR, 45 Center Drive, 4AN–24E,Bethesda, MD 20892,301–594–4859, *horsforj@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: July 30, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892(Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer NIDCR, 45 Center Drive, 4AN–24E,Bethesda, MD 20892,301–594–4859, *horsforj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9164 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Drug Interactions.

Date: May 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852(Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator,Office of Extramural Affairs,National Institute on Drug Abuse, NIH, DHHS,Room 220, MSC 8401,6101 Executive Blvd. Bethesda, MD 20892–8401,301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA L Conflicts.

Date: June 2, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue,Bethesda, MD 20814.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs,National Institute on Drug Abuse,National Institutes of Health, DHHS,6101 Executive Blvd., Suite 220, MSC 8401,Bethesda, MD 20892,301–402–7964, *mh392g@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA–E Conflicts.

Date: June 4, 2008.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Jose F. Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs,National Institute on Drug Abuse, NIH,6101 Executive Blvd., Rm. 213, MSC 8401,Bethesda, MD 20892,301–451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA-F Conflicts.

Date: June 4, 2008.

Time: 4:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Jury Washington Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Jose F. Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs,National Institute on Drug Abuse, NIH,6101 Executive Blvd., Rm. 213, MSC 8401,Bethesda, MD 20892,301–451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special

Emphasis Panel; Center Review Committee.

Date: July 21–23, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington DC 20037.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs,National Institute on Drug Abuse, NIH, DHHS,Room 212, MSC 8401,6101 Executive Boulevard,Bethesda, MD 20892–8401,301.435.1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Program Projects Review Committee.

Date: July 22, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs,National Institute on Drug Abuse, NIH, DHHS,Room 212, MSC 8401,6101 Executive Boulevard,Bethesda, MD 20892–8401,301.435.1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Center Review.

Date: July 23–24, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Rita Liu, PHD, Associate Director, Office of Extramural Affairs,National Institute on Drug Abuse, NIH, DHHS,Room 212, MSC 8401,6101 Executive Boulevard,Bethesda, MD 20892–8401,301.435.1388, *rliu@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 22, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9283 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Primary Immuno-Deficiencies.

Date: May 19, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive 3121, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program,Division of Extramural Activities,DHHS/National Institutes of Health/NIAID,6700B Rockledge Drive, MSC 7616,Bethesda, MD 20892–7616,301–402–7098, *pamstad@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Helper T Cell Immunity.

Date: May 28, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817(Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program,Division of Extramural Activities,DHHS/National Institutes of Health/NIAID,6700B Rockledge Drive, MSC 7616,Bethesda, MD 20892–7616,301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 22, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9285 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Cancer Therapeutics in Humans

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in PCT Application Serial No. PCT/US07/083027 and foreign equivalents thereof, entitled ''Smoothened Polypeptides and Methods of Use'' [HHS Ref. No. E–014–2007/0]; PCT Application Serial No. PCT/US07/083772 and foreign equivalents thereof, entitled ''Self-Assembling Nanoparticles Composed of Transmembrane Peptides and Their Application for Specific Intra-Tumor Delivery of Anti-Cancer Drugs'' [HHS Ref. No: E–256–2006/0]; and U.S. Patent No. 7,105,488, and foreign equivalents thereof, entitled ''G Protein-Coupled Receptor Antagonists'' [HHS Ref. No: E–290–1997/0] to Calidris Therapeutics which is registered in Japan. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive licensed territory may be worldwide and the field of use may be limited to peptidomimetic drugs for the treatment of cancer as claimed in the Licensed Patent Rights. These cancers may be limited to multiple myeloma, colon, lung, melanoma, liver, breast, prostate, ovarian, pancreatic cancers, ALL, AML, NHL, rhabdomyosarcoma, neuroblastoma, osteosarcoma and medulloblastoma. With respect to the GPCR technology, the exclusive license field of use may be limited to antagonists of the GPCR CXCR4.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 30, 2008, will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jennifer Wong, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; E-mail: *wongje@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The first technology describes inhibitors Smoothened protein (SMO), a receptor involved in the Hedgehog/Patched (HH/PTCH) pathway. HH/PTCH is a common pathway involved in proliferative disorders including cancer and psoriasis.

The technology is directed towards several synthetic peptides (including all-D analogs) corresponding to specific region of the SMO protein. Experiments *in vitro* demonstrate that they potentially suppress the growth of cancer cells and inhibit the expression of the HH/PTCH pathway genes. Due to their high hydrophobic properties, these peptide inhibitors can be easily formulated for specific intratumor delivery or topical creams for skin disorders.

The second technology relates to peptides corresponding to transmembrane domains of a number of integral membrane proteins. These peptides spontaneously self-assemble in aqueous solutions into stable and remarkably uniform nanoparticles. The nanoparticles of the current invention are fully synthetic, and their surfaces can be engineered to provide specific binding to cell surface receptors over-expressed on tumor cells. Thus, they are even more specific for tumor targeting.

Nanoparticles constructed from transmembrane domains of certain receptors and transporters have biological activities of their own and inhibit metastasis or drug resistance thus sensitizing tumors to therapy. Hydrophobic drugs can be easily entrapped inside the nanoparticles, which not only solve the problem of drug insolubility under physiological conditions, but also generate a form of a drug that concentrates in tumors due to enhanced permeability and retention effects.

The third technology relates to GPCRs. GPCRs are a large family of transmembrane receptors involved in the regulation of physiological activities. The inventors have found that if a peptide consisting of one of the GPCR transmembrane regions has a charged amino acid on the extracellular side and if said peptide is brought into contact with a cell with same GPCR, the GPCR function is disrupted. The inventors have developed inhibitory GPCR CXCR4 peptides. CXCR4 plays a significant role in cancer development as it is involved in tumor cell proliferation, migration, and metastasis.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

April 21, 2008.

David Sadowski,

Deputy Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–9286 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method To Treat Psoriasis in Humans

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Provisional Patent Application No. 60/855,422 and PCT Application Serial No. PCT/US07/083027 and foreign equivalents thereof, entitled ''Smoothened Polypeptides and Methods of Use'' [HHS Ref. No. E–014–2007/0], to Lee's Pharmaceuticals, Ltd., which is located in Hong Kong, China. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive licensed territory may be Asia and the field of use may be limited to the use of Licensee's proprietary delivery formulation for the treatment of

psoriasis as claimed in the Licensed Patent Rights.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 30, 2008 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jennifer Wong, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; E-mail: *wongje@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology describes inhibitors Smoothened protein (SMO), a receptor involved in the Hedgehog/Patched (HH/PTCH) pathway. HH/PTCH is a common pathway involved in proliferative disorders including cancer and psoriasis.

The technology is directed towards several synthetic peptides (including all-D analogs) corresponding to specific region of the SMO protein. Experiments *in vitro* demonstrate that they potentially suppress the growth of cancer cells and inhibit the expression of the HH/PTCH pathway genes. Due to their high hydrophobic properties, these peptide inhibitors can be easily formulated for specific intratumor delivery or topical creams for skin disorders.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 21, 2008.

David Sadowski,

Deputy Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–9254 Filed 4–28–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2008–N0047; 10120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants: Initiation of 5-Year Status Reviews for 70 Species in Idaho, Montana, Oregon, Washington, and the Pacific Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, initiate 5-year status reviews for 70 species in Idaho, Montana, Oregon, Washington, and the Pacific Islands under the Endangered Species Act of 1973, as amended (Act). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of these 5-year reviews, we will determine whether these species are properly classified under the Act.

DATES: We must receive your information no later than June 30, 2008. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: See ''Public Solicitation of New Information'' section for instructions on how to submit information.

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate individual named in the ''Public Solicitation of New Information'' section, below. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why Are 5-Year Reviews Conducted?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants (List) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. These actions must be supported by the best scientific and commercial data available. Delisting a species is considered only if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species is recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)). Any change in Federal classification would require a separate rulemaking process (i.e., a proposed rule, public comment period, and final rule). Regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. This notice announces our active review of the 70 species listed in Table 1.

TABLE 1.—SPECIES FOR WHICH WE ARE INITIATING A STATUS REVIEW TO DETERMINE IF THEY ARE APPROPRIATELY LISTED UNDER THE U.S. ENDANGERED SPECIES ACT

Common name	Scientific name	Status	Current range	Final listing rule
ANIMALS				
Akepa, Hawaii (honeycreeper)	*Loxops coccineus coccineus*	Endangered	U.S.A. (HI)	35 FR 16047; 10/13/1970
Akiapola'au (honeycreeper)	*Hemignathus munroi*	Endangered	U.S.A. (HI)	32 FR 4001; 03/11/1967
Coot, Hawaiian	*Fulica americana alai*	Endangered	U.S.A. (HI)	35 FR 16047; 10/13/1970
Creeper, Hawaii	*Oreomystis mana*	Endangered	U.S.A. (HI)	40 FR 44149; 10/28/1975
Megapode, Micronesian	*Megapodius laperouse*	Endangered	U.S.A. (MP), Palau	35 FR 8491; 06/02/1970
Millerbird, Nihoa (old world warbler).	*Acrocephalus familiaris kingi*	Endangered	U.S.A. (HI)	32 FR 4001; 03/11/1967

TABLE 1.—SPECIES FOR WHICH WE ARE INITIATING A STATUS REVIEW TO DETERMINE IF THEY ARE APPROPRIATELY LISTED UNDER THE U.S. ENDANGERED SPECIES ACT—Continued

Common name	Scientific name	Status	Current range	Final listing rule
Moorhen, Hawaiian common	*Gallinula chloropus sandvicensis.*	Endangered	U.S.A. (HI)	32 FR 4001; 03/11/1967
Shearwater, Newell's Townsend's.	*Puffinus auricularis newelli*	Threatened ..	U.S.A. (HI)	40 FR 44149; 10/28/1975
Stilt, Hawaiian	*Himantopus mexicanus knudseni.*	Endangered	U.S.A. (HI)	35 FR 16047; 10/13/1970
Swiftlet, Mariana gray	*Aerodramus vanikorensis bartschi.*	Endangered	U.S.A. (GU, MP)	49 FR 33881; 08/27/1984
White-eye, Rota bridled	*Zosterops rotensis*	Endangered	U.S.A. (MP)	69 FR 3022; 01/22/2004
		PLANTS		
ʻAkoko	*Euphorbia haeleeleana*	Endangered	U.S.A. (HI)	61 FR 53108; 10/10/1996
Alani	*Melicope pallida*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
Alani	*Melicope quadrangularis*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
Awiwi	*Centaurium sebaeoides*	Endangered	U.S.A. (HI)	56 FR 55770; 10/29/1991
Awiwi	*Hedyotis cookiana*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
ʻAe	*Zanthoxylum hawaiiense*	Endangered	U.S.A. (HI)	59 FR 10305; 03/04/1994
Bluegrass, Hawaiian	*Poa sandvicensis*	Endangered	U.S.A. (HI)	57 FR 20580; 05/13/1992
Bluegrass, Mann's	*Poa mannii*	Endangered	U.S.A. (HI)	59 FR 56330; 11/10/1994
Gentner's fritillary	*Fritillaria gentneri*	Endangered	U.S.A. (CA, OR)	64 FR 69195; 12/10/1999
Fern, pendant kihi	*Adenophorus periens*	Endangered	U.S.A. (HI)	59 FR 56333; 11/10/1994
Haha	*Cyanea koolauensis*	Endangered	U.S.A. (HI)	61 FR 53089; 10/10/1996
Haha	*Cyanea recta*	Threatened ..	U.S.A. (HI)	61 FR 53070; 10/10/1996
Haha	*Cyanea remyi*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
Haʻiwale	*Cyrtandra limahuliensis*	Threatened ..	U.S.A. (HI)	59 FR 9304; 02/25/1994
Heau	*Exocarpos luteolus*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
Iliau, dwarf	*Wilkesia hobdyi*	Endangered	U.S.A. (HI)	57 FR 27859; 06/22/1992
Ischaemum, Hilo	*Ischaemum byrone*	Endangered	U.S.A. (HI)	59 FR 10305; 03/04/1994
Kaulu	*Pteralyxia kauaiensis*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
Kokiʻo	*Kokia kauaiensis*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
Kokiʻo keʻokeʻo	*Hibiscuswaimeaessp. hannerae*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
Kolea	*Myrsine linearifolia*	Threatened ..	U.S.A. (HI)	61 FR 53070; 10/10/1996
Kuahiwi laukahi	*Plantago princeps*	Endangered	U.S.A. (HI)	59 FR 56333; 11/10/1994
Kuawawaenohu	*Alsinidendron lychnoides*	Endangered	U.S.A. (HI)	61 FR 53089; 10/10/1996
Laulihilihi	*Schiedea stellarioides*	Endangered	U.S.A. (HI)	61 FR 53089; 10/10/1996
Loʻulu	*Pritchardia napaliensis*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
Mahoe	*Alectryon macrococcus*	Endangered	U.S.A. (HI)	57 FR 20772; 05/15/1992
Mapele	*Cyrtandra cyaneoides*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
Maʻoliʻoli	*Schiedea apokremnos*	Endangered	U.S.A. (HI)	56 FR 49639; 09/30/1991
Maʻoliʻoli	*Schiedea kealiae*	Endangered	U.S.A. (HI)	61 FR 53089; 10/10/1996
Naupaka, dwarf	*Scaevola coriacea*	Endangered	U.S.A. (HI)	51 FR 17971; 05/16/1986
Naʻenaʻe	*Dubautia latifolia*	Endangered	U.S.A. (HI)	57 FR 20580; 05/13/1992
Nehe	*Lipochaeta fauriei*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
Nehe	*Lipochaeta waimeaensis*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
No common name	*Abutilon eremitopetalum*	Endangered	U.S.A. (HI)	56 FR 47686; 09/20/1991
No common name	*Bonamia menziesii*	Endangered	U.S.A. (HI)	59 FR 56333; 11/10/1994
No common name	*Chamaesyce halemanui*	Endangered	U.S.A. (HI)	57 FR 20580; 05/13/1992
No common name	*Diplazium molokaiense*	Endangered	U.S.A. (HI)	59 FR 49025; 09/26/1994
No common name	*Gouania meyenii*	Endangered	U.S.A. (HI)	56 FR 55770; 10/29/1991
No common name	*Hesperomannia lydgatei*	Endangered	U.S.A. (HI)	56 FR 47695; 09/20/1991
No common name	*Mariscus pennatiformis*	Endangered	U.S.A. (HI)	59 FR 56333; 11/10/1994
No common name	*Munroidendron racemosum*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
No common name	*Poa siphonoglossa*	Endangered	U.S.A. (HI)	57 FR 20580; 05/13/1992
No common name	*Remya kauaiensis*	Endangered	U.S.A. (HI)	56 FR 1450; 01/14/1991
No common name	*Remya montgomeryi*	Endangered	U.S.A. (HI)	56 FR 1450; 01/14/1991
No common name	*Schiedea helleri*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
No common name	*Schiedea membranacea*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
No common name	*Schiedeaspergulinavar. leiopoda.*	Endangered	U.S.A. (HI)	59 FR 9304; 02/25/1994
No common name	*Schiedeaspergulinavar. spergulina.*	Threatened ..	U.S.A. (HI)	59 FR 9304; 02/25/1994
No common name	*Silene hawaiiensis*	Threatened ..	U.S.A. (HI)	59 FR 10305; 03/04/1994
No common name	*Silene lanceolata*	Endangered	U.S.A. (HI)	57 FR 46325; 10/08/1992
No common name	*Spermolepis hawaiiensis*	Endangered	U.S.A. (HI)	59 FR 56333; 11/10/1994
No common name	*Stenogyne bifida*	Endangered	U.S.A. (HI)	57 FR 46325; 10/08/1992
Oha	*Delissea rivularis*	Endangered	U.S.A. (HI)	61 FR 53070; 10/10/1996
Oʻha wai	*Clermontia lindseyana*	Endangered	U.S.A. (HI)	59 FR 10305; 03/04/1994
Ohai	*Sesbania tomentosa*	Endangered	U.S.A. (HI)	59 FR 56333; 11/10/1994
Puʻukaʻa	*Cyperus trachysanthos*	Endangered	U.S.A. (HI)	61 FR 53108; 10/10/1996
Rough popcornflower	*Plagiobothrys hirtus*	Endangered	U.S.A. (OR)	65 FR 3866; 01/25/2000

TABLE 1.—SPECIES FOR WHICH WE ARE INITIATING A STATUS REVIEW TO DETERMINE IF THEY ARE APPROPRIATELY LISTED UNDER THE U.S. ENDANGERED SPECIES ACT—Continued

Common name	Scientific name	Status	Current range	Final listing rule
Spalding's catchfly	*Silene spaldingii*	Threatened	U.S.A. (ID, MT, OR, WA)	66 FR 51597; 10/10/2001
Uhiuhi	*Caesalpinia kavaiense*	Endangered	U.S.A. (HI)	51 FR 24672; 07/08/1996

What Information Do We Consider in the Review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider data that has become available since the listing determination or most recent status review, such as:

- Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;
- Habitat conditions including, but not limited to, amount, distribution, and suitability;
- Conservation measures that have been implemented that benefit the species;
- Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species is Endangered or Threatened?''); and
- Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen As a Result of This Review?

If we find information concerning the 70 species listed in Table 1 indicating that a change in classification is warranted, we may propose to: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List and retain its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we solicit new information from the public, governmental agencies, Tribes, the scientific community, environmental entities, industry, and any other interested parties concerning the status of the species in Table 1.

If you wish to provide information, submit your comments and materials to the Field Supervisors at the appropriate Fish and Wildlife Office listed below. 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.

For the species under review, submit information and direct species-specific questions to the addresses and individuals as follows:

Gentner's fritillary and rough popcornflower

Send information to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, or to *FW1OR5yearReview@fws.gov.*

Questions: Rollie White, 503–231–6179.

Spalding's catchfly

Send information to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, ID 83709, or to *FW1SRBOcomment@fws.gov.*

Questions: Susan Burch, 208–378–5243.

Species in Hawaii, Commonwealth of the Northern Mariana Islands, and Territory of Guam

Send information to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Box 50088, Honolulu, HI 96850, or to *pifwo-5yr-review@fws.gov.*

Questions: Marilet A. Zablan, 808–792–9400.

Completed and Active Reviews

A list of all species under active 5-year review, for which the Pacific Region of the Service is the lead region, including those we are initiating under this Notice, are available at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5yearactive.html.*

Completed 5-year reviews, for which the Pacific Region of the Service is the lead region, are available at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5yearcomplete.html.*

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 21, 2008.

Renne R. Lohoefener,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E8–9198 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0096; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 29, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the

Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: IUCN Iguana Specialist Group, Escondido, CA, PRT–836457.

The applicant requests a permit to renew their permit to import biological samples from the following species: Cyclura carinata bartschi, Cyclura carinata carinata, Cyclura collei, Cyclura cornuta, Cyclura cychlura, Cyclura nubila, Cyclura pinguis, Cyclura ricordi, Cyclura rileyi, Cyclura stejnegeri, and Cyclura lewisi for the purpose of scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: Oral E. Micham, Woodlake, CA, PRT–178000.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard R. Albro, The Woodlands, TX, PRT–178002.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gerald L. Bridges, Chelsea, MI, PRT–178717.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John K. Bennet, Bozeman, MT, PRT–178718.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Bret E. Fuller, Sunnyvale, CA, PRT–179257.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Eldon R. Bell, San Angelo, TX, PRT–178716.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robin G. Fiske, Conroe, TX, PRT–180473.

The applicant requests a permit to import the sport-hunted trophy of one cape mountain zebra (*Equus zebra zebra*) taken from a ranch in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Catherine L. Foy, Foy Marine Consulting, Kodiak, AK, PRT–167514.

The applicant requests a permit to harass up to 200 northern sea otters, *Enhydra lutris kenyoni*, from the threatened population of the species in Chiniak Bay near Kodiak Island, Alaska, through boat-based surveying for the purpose of scientific research to evaluate the impact of bringing the runway safety areas at Kodiak Airport into compliance with the current standards. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Larry R. Steiner, Otego, NY, PRT–180289.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Mark R. Beeler, Hubertus, WI, PRT–180359.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Stephen D. Hornady, Grand Island, NE, PRT–180363.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Kevin L. Reid, Albuquerque, NM, PRT–180365.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: James M. Mazur, Sheridan, WY, PRT–180664.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: April 11, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–9294 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection request (ICR) for approval of the paperwork requirements for the National Land Remote Sensing Education, Outreach and Research Program (NLRSEORP). To submit a proposal for the NLRSEORP three standard OMB forms and project narrative must be completed and submitted via Grants.gov. This notice provides the public an opportunity to comment on the paperwork burden of these forms. The forms are available at *http://www07.grants.gov/agencies/approved_standard_forms.jsp*.

DATES: Submit written comments by June 30, 2008.

ADDRESSES: You may submit comments on this information collection to the Department of the Interior, USGS, via:

- *E-mail atravnic@usgs.gov.* Use Information Collection Number 1028–NEW, NLRSEORP in the subject line.
- *FAX:* (703) 648–7069. Use Information Collection Number 1028–NEW, NLRSEORP in the subject line.
- Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection 1028–NEW, NLRSEORP in your comments.

FOR FURTHER INFORMATION CONTACT: Thomas Cecere at 703–648–5551. Copies of the forms can be obtained at no cost at *http://www.reginfo.gov*, or by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION:

Title: National Land Remote Sensing Education, Outreach and Research Program (NLRSEORP).

OMB Control Number: 1028–NEW NLRSEORP

Form Number: Standard Form 424 Application for Federal Assistance, Standard Form 424A Budget Information Non-Construction Programs, and Standard Form 424B Assurances, Non-Construction Programs, and Project narrative guidance posted on Grants.gov.

Abstract: Respondents are submitting proposals to acquire funding for a National (U.S.) program to promote the uses of space-based land remote sensing data and technologies through education and outreach at the State and local level and through university based and collaborative research projects. Technologies of interest include multispectral and hyper-spectral electro-optical, thermal, and radar. Although most activities are anticipated to occur at the State and local levels, a national coordination effort is necessary to ensure a standardized approach and to ensure a consistent quality of information.

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), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency: Annually.

Estimated Number and Description of Respondents: Approximately 10 proposals are submitted by individuals involved in the area of geospatial science.

Estimated Number of Responses: 10.

Annual burden hours: 240.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden averages 16 to 24 hours per response. This includes the time for reviewing instructions, developing the proposal, and completing and reviewing the information.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, 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: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (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, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period.

USGS Information Collection Clearance Officer: Alfred Travnicek, 703–648–7231.

Dated: April 21, 2008.

Bruce Quirk,

Program Coordinator, Land Remote Sensing Program, U.S. Geological Survey.

[FR Doc. E8–9197 Filed 4–28–08; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–FQ; SDM 94312]

Public Land Order No. 7705; Withdrawal of National Forest System Land To Preserve Cave Resources Adjacent to Jewel Cave National Monument; South Dakota; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7705, 73 FR 21151–21152, published April 18, 2008, as FR Doc. E8–8410, make the following correction:

On page 21151, column 1, in T. 4 S., R. 3 E., Sec. 6, lots 3 and 4 should read ''excluding that portion withdrawn by PLO 2965''.

Dated: April 22, 2008.

Cindy Staszak,

Chief, Branch of Land Resources.

[FR Doc. E8–9318 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0019]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0162).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on information collection request (ICR) that we will submit to the Office of Management and Budget (OMB) for review and approval. This ICR concerns the paperwork requirements in the regulations under the Chief Financial Officers Act of 1990 (CFO). This ICR is titled ''Accounts Receivable Confirmations.''

DATES: Submit written comments on or before *June 30, 2008.*

ADDRESSES: You may submit comments by the following methods:

- Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0019'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. 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 posted to the docket.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0162 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. Please reference ICR 1010–0162 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231–3495, or e-mail *hyla.hurst@mms.gov.* You may also contact Hyla Hurst to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Accounts Receivable Confirmations.

OMB Control Number: 1010–0162.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act of 1920 (30 U.S.C. 1923), the Indian Mineral Development of 1982 (Pub. L. 97–382—Dec. 22, 1982), and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties and other mineral revenues from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral revenues are on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

Every year, under CFO, the Department's Office of Inspector General, or its agent (agent), audits the Department's financial statements. The Department's goal is to receive an unqualified opinion. Accounts receivable confirmations are a common practice in the audit business. Due to continuously increasing scrutiny on financial audits, third-party confirmation on the validity of MMS financial records is necessary. Companies submit financial information on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140, expires November 30, 2009) and on Form MMS–4430, Solid Minerals Production and Royalty Report (OMB Control Number 1010–0120, expires December 31, 2010).

As part of CFO audits, the agent requests, by a specified date, third-party confirmation responses confirming that MMS accounts receivable records agree with royalty payor records, for the following items: customer identification; royalty/invoice number; payor-assigned document number; date received; original amount reported; and remaining balance due MMS as of a specified date. In order to meet this requirement, MMS must mail letters on MMS letterhead, signed by the Deputy Associate Director for Minerals Revenue Management, to royalty payors selected by the agent at random, asking them to confirm back to the agent the accuracy and/or validity of selected royalty receivable items and amounts. Verifying the amounts reported and the balances due requires time for research and analysis by payors.

This collection does not require proprietary, trade secret, or other confidential information not protected by agency procedures. No items of a sensitive nature are collected. The requirement to respond is voluntary.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the duties of the office. Failure to collect this information could be considered a scope limitation for CFO audits.

Frequency: Annually.

Estimated Number and Description of Respondents: 125 Federal and Indian oil and gas and solid mineral royalty payors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 32 hours. We estimate that each response will take 15 minutes for payors to complete.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burden 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, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) 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.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: April 23, 2008.

Richard J. Adamski,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E8–9331 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0018]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices for calendar year 2006.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require MMS to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion prices. This notice provides the major portion prices for the 12 months of 2006.

DATES: The due date to pay additional royalties based on the major portion prices is June 30, 2008.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; FAX (303) 231–3755; e-mail to *John.Barder@mms.gov;* or Larry Gratz, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3427; FAX (303) 231–3755; e-mail to *Larry.Gratz@mms.gov. Mailing address:* Minerals Management Service, Minerals Revenue Management, Compliance and Asset Management, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (2007). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest, under 30 CFR 218.54, will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-designated areas	Jan 2006	Feb 2006	Mar 2006	Apr 2006
Blackfeet Reservation	10.17	7.12	6.07	5.38
Fort Belknap	6.36	6.15	5.95	5.99
Fort Berthold	7.45	6.44	5.37	5.47
Fort Peck Reservation	9.89	7.96	7.57	6.07
Navajo Allotted Leases in the Navajo Reservation	10.03	7.24	6.57	6.03
Rocky Boys Reservation	7.05	5.66	5.01	4.74
Ute Allotted Leases in the Uintah and Ouray Reservation	8.61	6.59	6.40	5.95
Ute Tribal Leases in the Uintah and Ouray Reservation	8.66	6.45	5.54	5.07

	May 2006	Jun 2006	Jul 2006	Aug 2006
Blackfeet Reservation	5.60	4.78	4.82	5.14
Fort Belknap	5.91	5.86	5.69	6.11
Fort Berthold	5.05	5.15	5.23	5.87
Fort Peck Reservation	6.97	6.35	6.70	7.07
Navajo Allotted Leases in the Navajo Reservation	6.22	5.22	5.59	6.49
Rocky Boys Reservation	4.17	4.27	4.22	4.85
Ute Allotted Leases in the Uintah and Ouray Reservation	5.49	4.92	4.64	5.31
Ute Tribal Leases in the Uintah and Ouray Reservation	4.99	4.19	4.43	5.21

	Sep 2006	Oct 2006	Nov 2006	Dec 2006
Blackfeet Reservation	5.26	3.69	5.73	6.63
Fort Belknap	5.79	5.78	6.20	6.13
Fort Berthold	4.56	4.88	6.62	6.41
Fort Peck Reservation	5.91	4.72	6.72	7.89
Navajo Allotted Leases in the Navajo Reservation	6.62	4.20	6.58	6.71
Rocky Boys Reservation	3.40	4.27	5.67	5.23
Ute Allotted Leases in the Uintah and Ouray Reservation	4.65	2.80	5.57	5.28
Ute Tribal Leases in the Uintah and Ouray Reservation	4.08	2.30	5.65	5.39

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the MMS Web site at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/991201.pdf.*

Dated: February 28, 2008.

Walter D. Cruickshank,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E8–9338 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Paul H. Karshner Memorial Museum, Puyallup, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Paul H. Karshner Memorial Museum, Puyallup, WA. The human remains were removed from an area of the Nez Perce Reservation, ID.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Paul H. Karshner Memorial Museum professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho. The U.S. Department of the Interior, Bureau of Indian Affairs does not exert control over the human remains in this notice.

In 1935, human remains representing a minimum of one individual were removed from the Nez Perce Reservation, ID. The human remains were donated by Lester Davis in 1935. It is unknown how Mr. Davis acquired the human remains. No known individual was identified. No associated funerary objects are present.

Mr. Davis was known to have collected Native American objects. This donation was one of three recorded donations found in the museum's inventory book. According to museum records, the human remains are identified as Native American. Based on museum records and donor information, the human remains are reasonably believed to be Native American.

The geographical area that the human remains were removed from was the Nez Perce Reservation. The Western Idaho area is known to be aboriginal lands for the Nez Perce Tribe of Idaho. Officials of the Paul H. Karshner Museum reasonably believe the human remains are Native American and most likely culturally affiliated with the Nez Perce Tribe of Idaho.

Officials of the Paul H. Karshner Memorial Museum have determined that, pursuant to 25 U.S.C. 3001(910), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Paul H. Karshner Memorial also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes it to be culturally affiliated with the human remains should contact Stephen Crowell, Paul H. Karshner Memorial Museum, 309 4th St., NE., Puyallup, WA 98372, telephone (253) 841–8748, before May 29, 2008. Repatriation of the human remains to the Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

Paul H. Karshner Memorial Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho that this notice has been published.

Dated: March 10, 2008.

Sherry Hutt,

Manager, National NAGPR Program.

[FR Doc. E8–9149 Filed 4–28–08; 8:45 am]

BILLING CODE 4312–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control

Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

DATES AND LOCATION: The Council will conduct a meeting at the following time and location:

Thursday, May 29, 2008—Montrose, Colorado—The meeting will be held at the Holiday Inn Express Hotel and Suites, 1391 S. Townsend Avenue. The meeting will begin at 8 a.m., recess at approximately 10 a.m., and may reconvene the following day.

ADDRESSES: The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@uc.usbr.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss and take appropriate actions regarding the following: (1) Legislation included in the Farm Bill to amend the Salinity Control Act, Public Law 93–320, to create the Basin States Program; (2) election of officers; (3) frequency of Council meetings; and (4) other items within the jurisdiction of the Council.

Public Disclosure

Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 25, 2008.

Dave Sabo,

Acting Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. E8–9053 Filed 4–28–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0052]

Civil Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Claims Under the Radiation Exposure Compensation Act

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 30, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact the Radiation Exposure Compensation Program, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Claims Under the Radiation Exposure Compensation Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: N/A. DOJ Component: Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Abstract:* Information is collected to determine whether an individual is entitled to compensation under the Radiation Exposure Compensation Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 2,000 respondents annually, and each respondent will require 2.5 hours to complete the information collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,000 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

April 23, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–9036 Filed 4–28–08; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0043]

Criminal Justice Information Services Division; National Instant Criminal Background Check System Section; Agency Information Collection Activities: Existing Collection, Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Approval of a existing collection; The Voluntary Appeal File (VAF) Brochure.

The Department of Justice (DOJ), FBI, Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 30, 2008. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), § 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Natalie N. Snider, Management and Program Analyst, FBI, Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile at (304) 625–7540.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval of an Existing Collection.

(2) *Title of the Form:* The Voluntary Appeal File (VAF) Brochure.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0043.

Sponsor: Criminal Justice Information Services (CJIS) Division of the FBI, Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any individual requesting entry into the FBI's Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section's Voluntary Appeal File (VAF).

Brief Abstract: Under 28 CFR, § 25.9(b)(1), (2), (3), the NICS must destroy all identifying information on allowed transactions within 24 hours of the Federal Firearm Licensee (FFL) being notified of the transaction's proceed status. If a potential purchaser is delayed or denied a firearm, then successfully appeals the decision, the NICS Section cannot retain a record of the overturned appeal or the supporting documentation. If the record cannot be updated, the purchaser continues to be delayed or denied, and if that individual appeals the decision, the documentation must be resubmitted for every subsequent purchase. As such, the Voluntary Appeal File (VAF) was mandated to be created and maintained by the NICS Section for the purpose of preventing future lengthy delays or erroneous denials of a firearm transfer. An individual wishing to request entry into the VAF may obtain a VAF brochure from the NICS Section, an FFL, or the NICS Section Web site at the Internet address: *http://www.fbi.gov/programs/nics/index.htm.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

It is estimated that 12,500 individuals will request entry into the VAF. It takes an average of 5 minutes to read and complete all areas of the application, an estimated 2 hours for the process of fingerprinting including travel, and 25 minutes to mail the form for a total of 2.5 hours estimated burden to the respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The number of persons requesting entry into the VAF is estimated to be 12,500 individuals. The time it takes each individual to complete the process is 2.5 hours. The total public burden hours is 12,500 respondents multiplied by 2.5 hours which equals 31,250 total burden hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 23, 2008.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E8–9031 Filed 4–28–08; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), 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. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Employee Polygraph Protection Act Regulations 29 CFR part 801. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the

addresses section below on or before June 30, 2008.

ADDRESSES: Mr. Steve Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, *E-mail andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. 2001 *et seq.,* prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. *See* 29 CFR 801.1(a). Federal, State and local government employers are exempted from the Act. *Id.* EPPA section 7 contains several limited exemptions authorizing polygraph tests under certain conditions, including testing: (1) By the Federal Government of experts, consultants or employees of Federal contractors, to name a few, engaged in national security intelligence or counterintelligence functions [29 U.S.C. 2006(b)–(c); 29 CFR 801.11]; (2) of employees the employer reasonably suspects of involvement in a workplace incident resulting in economic loss or injury to the employer's business [29 U.S.C. 2006(d); 29 CFR 801.12]; (3) of some current and prospective employees of certain firms authorized to manufacture, distribute or dispense controlled substances [29 U.S.C. 2006(f); 29 CFR 801.13]; and (4) of some prospective employees of private armored car, security alarm and security guard firms [29 U.S.C. 2006(e); 29 CFR 801.14]. The DOL's Wage and Hour Division may assess civil money penalties of up to $10,000 per violation against employers who violate any EPPA provision. *See* 29 U.S.C. 2005(a); 29 CFR 801.40(a)(2). EPPA section 5 requires the Secretary of Labor to promulgate such rules and regulations as may be necessary to carry out the Act and to require the recordkeeping necessary or appropriate for administration of the Act. *See* 29 U.S.C. 2004(a); 29 CFR 801.1(a), 801.30. Appendix A of Regulations 29 CFR part 801 contains a written statement setting forth both the examinee's and employer's legal rights for use in satisfying the EPPA section 8(b)(2)(d) disclosure requirement. Employers may use optional Form WH–1481 to provide this notice. This information collection is currently approved for use through October 31, 2008.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The DOL seeks approval for the extension of this currently approved information collection in order to carry out its responsibility to ensure that individuals subjected to polygraph testing are afforded the rights and protections contained in the EPPA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employee Polygraph Protection Act.

OMB Number: 1215–0170.

Agency Number: WH–1481.

Affected Public: Business or other for-profit, not-for-profit institutions, farms.

Total Respondents: 328,000.

Total Annual Responses: 328,000.

Estimated Time per Response: Varies from 1 minute to 30 minutes, depending on the notice.

Estimated Total Burden Hours: 68,738.

Frequency: On occasion (recordkeeping, reporting, third-party disclosure).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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: April 24, 2008.

Steve Andoseh,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–9308 Filed 4–28–08; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

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. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), and Employment History (CM–911a). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 30, 2008.

ADDRESSES: Mr. Steven M. Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, *E-mail andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Federal Mine Safety and Health Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977 and subsequent amendments, 30

U.S.C. 901 *et seq.,* provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of the miner who died due to pneumoconiosis.

A miner who applies for black lung benefits must complete the CM–911 (application form). The completed form gives basic identifying information about the applicant and is the beginning of the development of the black lung claim. The applicant must complete a CM–911a at the same time the black lung application form is submitted. This form when completed is formatted to render a complete history of employment and helps to establish if the miner currently or formerly worked in the nation's coal mines. The person filing for benefits must have worked in the nation's coal mines or be a survivor of a coal miner as described under Title IV of the Federal Mine Safety and Health Act of 1977, as amended, in order for benefits to be pursued. This information collection is currently approved for use through September 30, 2008.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to determine eligibility for black lung benefits.

Type of Review: Extension of a currently approved collection of information.

Agency: Employment Standards Administration.

Titles: Miner's Claim for Benefits Under the Black Lung Benefits Act; Employment History.

OMB Number: 1215–0052.

Agency Numbers: CM–911; CM–911a.

Affected Public: Individuals or households.

Average Time per Responses: 42 minutes.

Total Respondents: 7,500.

Total Annual Responses: 7,500.

Estimated Total Burden Hours: 5,250.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,449.00.

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: April 24, 2008.

Steve Andoseh,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–9309 Filed 4–28–08; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0013]

Announcement of a Meeting of the Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Groups

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Announcement of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Groups.

SUMMARY: ACCSH will meet May 15–16, 2008, in Washington, DC. ACCSH Work Groups will meet May 13–14, 2008.

DATES: *ACCSH Meeting:* ACCSH will meet from 8:30 a.m. to 5 p.m., Thursday, May 15, 2008, and from 8:30 a.m. to noon, Friday, May 16, 2008.

ACCSH Work Groups: ACCSH Work Groups will meet May 13–14, 2008.

Submission of comments, requests to speak to ACCSH and requests for special accommodation: Comments, requests to speak and requests for special accommodation must be submitted (postmarked, sent, received) by May 1, 2008.

ADDRESSES: *ACCSH Meeting:* ACCSH will meet in Room N–3437A–D at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

ACCSH Work Group Meetings: ACCSH Work Groups will meet in Rooms N–3437A–D at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments, requests to speak at the ACCSH meeting and requests for special accommodation: Interested parties may submit comments, requests to speak and requests for special accommodation by mail, hand delivery, express mail, messenger, courier service, telephone (requests for special accommodations only), FAX (if submission does not exceed 10 pages), or e-mail to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; FAX (202) 693–1635; e-mail *chatmon.veneta@dol.gov*.

Instructions: All submissions and requests to speak must include the Agency name and the docket number for this meeting (Docket No. OSHA–2008–0013). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt.

All submissions, including personal information, are placed in the public docket without change and may be available online. Therefore, OSHA cautions you about submitting certain personal information such as social security numbers and birthdates. For further information on submitting comments, requests to speak and requests for public accommodation, see the Public Participation information in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Ms. Jennifer Ashley, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information about ACCSH and ACCSH meetings: Mr. Michael Buchet, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020; e-mail *buchet.michael@dol.gov*.

For information about submitting comments or requests to speak to

ACCSH, and for special accommodations for the meeting: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov*.

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

ACCSH will meet May 15–16, 2008, in Washington, DC. The meeting is open to the public.

ACCSH is authorized to advise the Assistant Secretary of Labor for Occupational Safety and Health in the formulation of standards affecting the construction industry and on policy matters arising in the administration of the safety and health provisions of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701, 3704) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*). (See also, 29 CFR 1911.10 and 1912.3).

The agenda for this meeting includes:

- ACCSH's consideration of and recommendations on the following proposed rules:
  - Porta Count Respirator Fit Test Protocol;
  - Clarification of Remedy for Violation of Requirements To Provide Personal Protective Equipment and Train Employees;
- Construction Standards Update—OSHA, Directorate of Construction (DOC);
- Mast Climbing Scaffold Investigations, Lessons Learned—OSHA, Office of Engineering Services, DOC;
- Cooperative Programs Update—OSHA Challenge, Voluntary Protection Program, and recent construction partnerships—OSHA, Directorate of Cooperative and State Programs;
- Consultation data discussion—OSHA, Directorate of Evaluation and Analysis; and
- Construction Update—NIOSH, Construction Coordinator.

All ACCSH meetings, as well as those of its Work Groups, are open to the public. Individuals needing special accommodations for the ACCSH meeting or ACCSH Work Group meetings should contact Ms. Chatmon by May 1, 2008 (see **ADDRESSES** section).

ACCSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the official record of ACCSH meetings.

ACCSH Work Groups

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet:

- Diversity—9 to 11:30 a.m., May 13, 2008;
- Trenching—9 to 11:30 a.m., May 13, 2008;
- Multilingual—1 to 3:30 p.m., May 13, 2008;
- ROPS (Rollover Protective Systems)—1 to 3:30 p.m., May 13, 2008;
- Focused Inspection Initiative—9 to 11:30 a.m., May 14, 2008;
- Residential Fall Protection—9 to 11:30 a.m., May 14, 2008;
- Silica—9 to 11:30 a.m., May 14, 2008;
- OTI (OSHA Training Institute)—1 to 3:30 p.m., May 14, 2008.

For additional information on ACCSH Work Group meetings or participating in them, please contact Mr. Michael Buchet at the address above or look on the ACCSH page on OSHA's Web page at *http://www.osha.gov*.

Public Participation

Submission of written comments and requests to address ACCSH. Interested parties may request to make oral presentations to ACCSH by notifying Ms. Veneta Chatmon at the address above by May 1, 2008. The request must state the amount of time desired, the interest the presenter represents (e.g., organization name), if any, and a brief outline of the presentation. Requests to address the committee may be granted at the ACCSH Chair's discretion and as time permits.

Attendees and interested parties may also submit written data, views, or comments, preferably with 20 copies, to Ms. Chatmon at the address above by May 1, 2008. Submissions, including personal information provided, will be posted without change at *http://www.regulations.gov*, the Federal eRulemaking Portal. Therefore, OSHA cautions interested parties about submitting certain personal information such as birth dates and social security numbers. Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. For more information about security procedures for making submissions, please contact Ms. Chatmon (see **ADDRESSES** section) or the OSHA Docket Office at Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). The Department of Labor's and OSHA Docket Office's normal business hours are 8:15 a.m.–4:45 p.m., e.t.

OSHA will provide the submissions to ACCSH members and will include submissions in the official record of the meeting.

Access to the official record of ACCSH meetings, including Work Group reports. To read or download submissions or the official record of this ACCSH meeting, go to Docket No. OSHA–2008–0013 at *http://www.regulations.gov*. The official meeting record and all submissions for this meeting are listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (e.g., copyrighted materials) are not publicly available to read or download through *http://www.regulations.gov*. The official record and all submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office at the address above.

Meeting security procedures: Although ACCSH meetings, including Work Group meetings, are open to the public, anyone attending meetings at the U.S. Department of Labor will be required to pass through Building Security at the Visitors' Entrance at 3rd and C Streets, NW., Washington, DC 20210, in order to be admitted to the building. Attendees must have valid government issued photo identification and should allow extra time for the security process.

Authority and Signature: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*), 29 CFR 1911 and 1912, and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, this 23rd day of April 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–9267 Filed 4–28–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–031)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–15995–1: Photogrammetric Recession Imaging Of An Ablating Surface.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel,Administration and Management.

[FR Doc. E8–9359 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–032)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Kaprice L. Harris, Attorney Advisor, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–5754; fax (216) 433–6790.

NASA Case No. LEW–18248–1: Cellular Reflectarray Antenna.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel,Administration and Management.

[FR Doc. E8–9360 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–033)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below, assigned to the National Aeronautics and SpaceAdministration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel,Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14993–1: Systems, Methods, And Apparatus Of A Space Communication File Transfer System;

NASA Case No. GSC–15317–1: Field Reactive Amplification Controlling Total Adhesion Loading (FRACTAL);

NASA Case No. GSC–15353–1: A Compact Magic-T Using Microstrip-Slotline Transitions;

NASA Case No. GSC–15184–1: Three-Dimensional Range Imaging Apparatus And Method;

NASA Case No. GSC–15301–1: Flash Drive Memory Apparatus And Method;

NASA Case No. GSC–15304–1: Digital Memory Storage Hub;

NASA Case No. GSC–15172–1: System And Method For Transferring Cargo Containers In Space;

NASA Case No. GSC–15303–1: Information Capturing Method;

NASA Case No. GSC–15338–1: Method for Non-Destructive Evaluation Of Thermal Protection System Materials And Other Materials Via Ultraviolet Spectroscopy;

NASA Case No. GSC–15328–1: Systems, Methods And Apparatus Of A Nitinol Valve;

NASA Case No. GSC–15024–1: Neutron Imaging Camera, Process And Apparatus For Detection Of Special Materials;

NASA Case No. GSC–15027–2: Interferometric Polarization Control;

NASA Case No. GSC–15027–3: Interferometric Polarization Control.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–9363 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–034)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below, assigned to the National Aeronautics and SpaceAdministration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel,Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–32324–1: Orbital Foamed Material Extruder;

NASA Case No. MFS–32471–1: Self-Contained, Controlled Liquid Metal Feed System;

NASA Case No. MFS–32588–1: Electrochemical And Mechanical Polishing And ShapingSystem And Method;

NASA Case No. MFS–32402–1: Position Sensing For Rotor In Hybrid Stepper Motor;

NASA Case No. MFS–32521–1: Ring-Laser Gyroscope System Using Dispersive Element(s);

NASA Case No. MFS–32311–1: Method And System For Identifying And Authenticating AnObject;

NASA Case No. MFS–32497–1: Eliminating Crystals In Non-Oxide Optical Fiber Preforms And Optical Fibers.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–9364 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–035)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics

and SpaceAdministration, and are the subjects of patent applications that have been filed in the UnitedStates Patent and Trademark Office, and are available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. DRC–007–022: Multicam Network Camera System;
NASA Case No. DRC–008–014: Improved Ram Booster;
NASA Case No. NPO–42466–1: Swept Frequency Laser Metrology System;
NASA Case No. NPO–44914–1: Magnetically Conformed, Variable Area Discharge Chamber for Hall Thruster, and Method;
NASA Case No. NPO–44765–1: Ultrasonic/Sonic Rotary-Hammer Drill;
NASA Case No. NPO–43801–1: Diffractive Optical Element of Optimized Diffractive Order for a Solar Concentrator;
NASA Case No. NPO–43348–1: Precise Delay Measurement Through Combinatorial Logic;
NASA Case No. NPO–43020–1: Carbon Nanotube Composite and Method of Making.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–9365 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–036)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, Houston, TX 77058–8452; telephone (281) 483–4871; fax (281) 483–6936.

NASA Case No. MSC–24215–1: Inflatable Nested Toroid Structure;
NASA Case No. MSC–23881–1: Two-Axis Joint Assembly And Method;
NASA Case No. MSC–24263–1: Impact Detection System;
NASA Case No. MSC–22939–3: Externally Triggered Microcapsules;
NASA Case No. MSC–23988–1: Micro-Organ Device.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel,Administration and Management.

[FR Doc. E8–9367 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–037)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–3221; fax (757) 864–9190.

NASA Case No. LAR–17480–1: Method Of Calibrating A Fluid-Level Measurement System;
NASA Case No. LAR–17402–1: Wholly Aromatic Liquid Crystalline Polyetherimide (LC–PEI) Resins;
NASA Case No. LAR–17455–1: A Carbon Nanotube Film Electrode And An Electroactive Device Fabricated With The Carbon Nanotube Film Electrode And A Method for Making Same;
NASA Case No. LAR–17151–2: Thin Metal Film System To Include Flexible Substrate And Method Of Making Same;
NASA Case No. LAR–17447–1: Multi-Functional Annular Fairing For Coupling Launch Abort Motor To Space Vehicle;
NASA Case No. LAR–17330–1: Composite Panel With Reinforced Recesses;
NASA Case No. LAR–17327–1: Apparatus, Method And Program Storage Device For Determining High-Energy Neutron/Ion Transport To A Target Of Interest;
NASA Case No. LAR–17478–1: Aircraft Wing For Over-the-Wing Mounting Of Engine Nacelle;
NASA Case No. LAR–17365–1: Boundary-Layer-Ingesting Inlet Flow Control System;
NASA Case No. LAR–17488–1: Wireless Sensing System For Non-Invasive Monitoring Of Attributes Of Contents In A Container;
NASA Case No. LAR 17321–1: Composite Insulated Conductor;
NASA Case No. LAR 17231–1: Variable Focal Point Optical Assembly Using Zone Plate And Electro-Optic Material;
NASA Case No. LAR17325–1: Method Of Performing Computational Aeroelastic Analyses.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–9368 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–038)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214; fax (321) 867–1817.

NASA Case No. KSC–12697–2: A New Approach For Achieving Flame Retardancy While Retaining Physical Properties In A Compatible Polymer Matrix;
NASA Case No. KSC–12697–3: A New Approach For Achieving Flame Retardancy While Retaining Physical Properties In A Compatible Polymer Matrix;
NASA Case No. KSC–13088: Improved Thermal Reactivity Of Hydrogen Sensing Pigments In Manufactured Polymer Composites;

NASA Case No. SSC–00247: Monitoring Method And Apparatus Using Asynchronous, One-Way Transmission From Sensor To Base Station.

Dated: April 23, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–9369 Filed 4–28–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: May 29, 2008; 1 p.m. to 5:30 p.m. (EST). May 30, 2008; 8 a.m. to 12 p.m. (EST).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375.

Type of Meeting: Open.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda

May 29, 2008

P.M.: Welcome/Introductions; Human Capital Strategic Plan; FY08 Budget Implications and FY09 Budget Highlights; Office of Information and Resource Management Update; Committee Discussion; Meeting with NSF Director; Chief Information Officer Update.

May 30, 2008

A.M.: Office of Budget, Finance and Award Management Update; Business System Review Subcommittee Update; Presentation and Discussion—Stewardship Goals and Performance Measures; Presentation—NSB Task Force on Cost Sharing; Presentation—Research.gov; Committee Discussion/Wrap-Up.

Dated: April 24, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–9354 Filed 4–28–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 189th meeting on May 20–22, 2008, at 11545 Rockville Pike, Rockville, Maryland.

Tuesday, May 20, 2008, Room T–2B3

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–5 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss the proposed ACNW&M letter report on the effects of Low Radiation Doses, Science and Policy.

Wednesday, May 21, 2008, Room T–2B1

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–5 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will continue to discuss the proposed ACNW&M letter report on the effects of Low Radiation Doses, Science and Policy.

Thursday, May 22, 2008, Room T–2B1

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–5 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will continue to discuss the proposed ACNW&M letter report on the effects of Low Radiation Doses, Science and Policy.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. (ET), as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Dr. Dias.

ACNW&M meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/acnw* (ACNW&M schedules and agendas).

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Assistant (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: April 23, 2008.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E8–9314 Filed 4–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

U.S. Nuclear Waste Technical Review Board Meeting; Las Vegas, NV

Board Meeting: May 29, 2008—Las Vegas, Nevada; The U.S. Nuclear Waste Technical Review Board will meet to

discuss the U.S. Department of Energy's Total System Performance Assessment of a proposed repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada.

Pursuant to its authority under section 5051 of Public Law 100–203, at 8 a.m. on Thursday, May 29, 2008, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, to discuss the U.S. Department of Energy's (DOE) total system performance assessment (TSPA) of the proposed repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. TSPA is a comprehensive computational analysis used by DOE for assessing the ability of the potential repository to provide long-term isolation and containment of radionuclides. The Board was charged in the Nuclear Waste Policy Amendments Act of 1987 with conducting an independent review of the technical and scientific validity of DOE activities related to implementation of the Nuclear Waste Policy Act, including disposing of, packaging, and transporting spent nuclear fuel and high-level radioactive waste.

The meeting, which will be open to the public, will be held in the Chancellor I Room of the Embassy Suites Convention Center Hotel; 3600 Paradise Road; Las Vegas, Nevada 89169; (tel) 702–893–8000; (fax) 702–893–0708. A block of rooms has been reserved under ''NWTRB'' at the meeting hotel, and the telephone number for reservations is 888–243–9146. To receive the meeting rate, please make your reservations no later than May 2.

The agenda will be on the World Wide Web at *http://www.nwtrb.gov* and will be available on request approximately one week before the meeting date. Board Chairman B. John Garrick will call the meeting to order. Dr. Garrick's opening remarks will be followed by an overview of DOE Office of Civilian Radioactive Waste Management program activities and plans. The balance of the agenda will be devoted to a discussion of the models, assumptions, and results of the TSPA that will be submitted by DOE to the Nuclear Regulatory Commission as part of an application for authorization to begin construction of a Yucca Mountain repository.

Time will be set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the public comment register at the check-in table. Although written comments of any length may be submitted for the public record, a time limit may have to be imposed on individual remarks.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff no later than June 23, 2008.

For more information, contact Karyn Severson, NWTRB External Affairs: 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367, (tel) 703–235–4473, (fax) 703–235–4495.

Dated: April 22, 2008.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. E8–9226 Filed 4–28–08; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57702; File No. SR–CBOE–2008–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Handling of Odd-lot Orders on the CBOE Stock Exchange

April 23, 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 22, 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 Exchange. The Exchange has designated this proposal as one effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders it 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 change CBOE Stock Exchange (''CBSX'') Rule 52.8, which governs the handling of odd-lot orders. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.cboe.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise CBSX Rule 52.8, which governs the handling of odd-lot orders. Currently, a marketable odd-lot order received by CBSX is executed against the best price being displayed by CBSX Market-Makers. As proposed, an odd-lot order (including the odd-lot portion of a mixed-lot order) received by CBSX would be displayed to CBSX Traders for a period of time not to exceed one second as determined by CBSX. The exposure would also include information regarding the applicable NBBO price for that product. Responses to trade against the odd-lot order could be submitted only at the applicable NBBO price or better and would have to be for the full size of the odd-lot order. The first CBSX Trader to respond would trade against the odd-lot order. If no responses are received, then the order would trade against the best price being displayed by a CBSX Market-Maker. If the odd-lot order has a limit price that is not marketable, it would be entered into an odd-lot order book, where CBSX Traders may submit orders to trade against resting interest. A final feature of the proposal is that odd-lot order senders would be able to specify that, if an NBBO execution is not attainable, the order should be cancelled. The Exchange believes this new method for handling odd-lot orders will result in better executions for odd-lots orders.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(5).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [5] in general and furthers the objectives of Section 6(b)(5) of the Act [6] in particular in that, by offering opportunities for price improvement for odd-lot orders, it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this proposal as effecting a change in an existing order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, thereby qualifying this proposal for filing under Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(5) thereunder,[8] which renders the proposal effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2008–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–48 and should be submitted on or before May 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9305 Filed 4–28–08; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57701; File No. SR–NYSEArca–2008–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Listing Rules Relating to Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

April 23, 2008.

I. Introduction

On February 14, 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''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. On March 14, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 24, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6) [4] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57505 (March 14, 2008), 73 FR 15550.

[4] NYSE Arca Equities Rule 5.2(j)(6) currently sets forth the Exchange's generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities. *See* NYSE Arca Equities Rule 5.2(j)(6). Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (''Equity Reference Asset''). Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201), or a basket or index of any of the foregoing (''Commodity Reference Asset''). Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing

Continued

adopt new generic listing standards, pursuant to which the Exchange would be able to list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities without Commission approval under Rule 19b–4(e) under the Act.[5] The Exchange also proposes to make conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to extend its application to Futures-Linked Securities and Multifactor Index-Linked Securities that are composed in part of Commodity, Currency, or Futures Reference Assets (as defined herein).

The Exchange represents that any securities it lists and/or trades pursuant to Rule 19b–4(e)(1) and NYSE Arca Equities Rule 5.2(j)(6), as amended, will satisfy the proposed standards set forth therein. The Exchange states that within five business days after commencement of trading of any such security under NYSE Arca Equities Rule 5.2(j)(6), as amended, the Exchange will file a Form 19b–4(e).[6]

Fixed Income Index-Linked Securities

Fixed Income Index-Linked Securities are securities that provide for the payment at maturity based on the performance of one or more indexes or portfolios of debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof, or a basket or index of any of the foregoing (collectively, ''Fixed Income Reference Asset''). Fixed Income Index-Linked Securities, like other Index-Linked Securities, will be subject to the general criteria in NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing.

For the initial listing of a series of Fixed Income Index-Linked Securities, the Fixed Income Reference Asset must either: (1) Have been reviewed and approved for the trading of options, Investment Company Units (as defined in NYSE Arca Equities Rule 5.2(j)(3)), or other derivatives by the Commission under Section 19(b)(2) of the Act[7] and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied, or (2) meet the following requirements:[8]

- Components of the Fixed Income Reference Asset that, in the aggregate, account for at least 75% of the dollar weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of $100 million or more;
- A component of the Fixed Income Reference Asset may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not, in the aggregate, account for more than 65% of the dollar weight of the Fixed Income Reference Asset;
- An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities)[9] must include a minimum of 13 non-affiliated issuers; and
- Component securities that, in the aggregate, account for at least 90% of the dollar weight of the Fixed Income Reference Asset must be from one of the following: (1) Issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;[10] or (2) issuers that have a worldwide market value of outstanding common equity held by non-affiliates of $700 million or more; or (3) issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; or (4) exempted securities, as defined in Section 3(a)(12) of the Act;[11] or (5) issuers that are a government of a foreign country or a political subdivision of a foreign country.

With respect to any series of Fixed Income Index-Linked Securities, the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day. In addition, the Exchange will commence delisting or removal proceedings if:[12]

- Any of the initial listing criteria for Fixed Income Index-Linked Securities are not continuously maintained;
- The aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than $400,000;
- The value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference is substituted, unless the new Fixed Income Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or
- Such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Futures-Linked Securities

Futures-Linked Securities are securities that provide for the payment at maturity based on the performance of an index of (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing, or (2) interest rate futures or options or derivatives on the foregoing (collectively, ''Futures Reference Asset''). Futures-Linked Securities will also be subject to the general criteria in NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing. An issue of Futures-Linked Securities must meet one of the initial listing standards set forth below:

- The Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act[13] and rules thereunder and the

(''Currency Reference Asset''). As a result of the proposed rule change, ''Index-Linked Securities,'' which currently include Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, will also include, by definition, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

[5] Rule 19b–4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4 under the Act (17 CFR 240.19b–4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e).

[6] *See* 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[7] 15 U.S.C. 78s(b)(2).

[8] The Exchange notes that the quantitative standards for Fixed Income Reference Assets are substantially similar to those set forth under Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) relating to fixed income securities underlying Investment Company Units. *See* Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

[9] The Exchange notes that, for purposes of this standard, ''exempted securities'' refers to Treasury Securities and GSE Securities, as defined in proposed NYSE Arca Equities Rule 5.2(j)(6)(iv).

[10] 15 U.S.C. 78m; 15 U.S.C. 78o(d).

[11] 15 U.S.C. 78c(a)(12).

[12] The Exchange notes that the continued listing standards for each of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantially similar to those standards currently applicable to other Index-Linked Securities.

[13] 15 U.S.C. 78s(b)(2).

conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

• The pricing information for components of a Futures Reference Asset must be derived from a market which is an Intermarket Surveillance Group (''ISG'') member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the specified foregoing requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, an issue of Futures-Linked Securities must meet both of the following initial listing criteria:

• The value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); [14] and

• In the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

The Exchange will commence delisting or removal proceedings if:

• Any of the initial listing criteria for Futures-Linked Securities are not continuously maintained;

• The aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than $400,000;

• The value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or

• Such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

[14] *See* NYSE Arca Equities Rule 7.34 (generally describing the three trading sessions of the Exchange to include the Opening Session, from 4 a.m. to 9:30 a.m. Eastern Time or ''ET,'' Core Trading Session, from 9:30 a.m. to 4 p.m. ET, and Late Trading Session, from 4 p.m. to 8 p.m. ET).

Multifactor Index-Linked Securities

Multifactor Index-Linked Securities are securities that provide for payment at maturity based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (collectively, the ''Multifactor Reference Asset,'' and together with Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, and Futures Reference Assets, collectively, the ''Reference Assets''). In addition, a Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, London Interbank Offered Rate (''LIBOR''), Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. The Exchange states that, for purposes of a notional investment as a component of a Multifactor Reference Asset, a long LIBOR weighting would represent a leverage charge offsetting long positions in the underlying Reference Assets.

Multifactor Index-Linked Securities will be subject to the general criteria under NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing. In addition, for a series of Multifactor Index-Linked Securities to be appropriate for listing, each component of the Multifactor Reference Asset must either: (1) Have been reviewed and approved for the trading of options, Investment Company Units, or other derivatives under Section 19(b)(2) of the Act [15] and rules thereunder and the conditions set forth in the Commission's approval order continued to be satisfied; or (2) meet the applicable requirements for initial and continued listing set forth in the relevant section of NYSE Arca Equities Rule 5.2(j)(6). In addition, an issue of Multifactor Index-Linked Securities must meet both of the following initial listing criteria:

• The value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on the Exchange; and

• In the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings if:

• Any of the initial listing criteria for Multifactor Index-Linked Securities are not continuously maintained;

• The aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than $400,000;

• The value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or

• Such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Information Circular

Upon evaluating the nature and complexity of each Fixed Income Index-Linked Security, Futures-Linked Security, or Multifactor Index-Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to ETP Holders [16] describing the product. Accordingly, the Information Circular will disclose the particular structure and corresponding risks of a Fixed Income Index-Linked Security, Futures-Linked Security, or Multifactor Index-Linked Security traded on the Exchange. In particular, the Information Circular will set forth the Exchange's suitability rule that requires ETP Holders recommending a transaction in Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities: (1) To determine that such transaction is suitable for the customer (NYSE Arca Equities Rule 9.2(a)); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that ETP Holders must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction. The Information Circular will also note that all of the Exchange's equity trading rules will be applicable to trading in Fixed Income Index-Linked

[15] 15 U.S.C. 78s(b)(2).

[16] 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).

Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. Finally, the Information Circular will discuss the risks involved in trading such securities during the Opening and Late Trading Sessions[17] when an updated indicative value or Reference Asset value, as applicable, will not be calculated or publicly disseminated.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Index-Linked Securities) to monitor trading in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of such securities in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade 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 may also obtain information via 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.

Trading Halts

If the indicative value or Reference Asset value applicable to a series of Index-Linked Securities is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption 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.

Firewall Procedures

Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, like other Index-Linked Securities, will be subject to the firewall requirements under NYSE Arca Equities Rule 5.2(j)(6)(C). The firewall requirements provide that, if the value of an Index-Linked Security is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

Furthermore, as provided in NYSE Arca Equities Rule 5.2(j)(6)(C), any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

Commentary .01

The Exchange has also proposed conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) relating to the obligations of an Exchange ETP Holder acting as a registered Market Maker in order to extend its application to Futures-Linked Securities and Multifactor Index-Linked Securities to the extent that such securities are composed, in part, of Commodity, Currency, or Futures Reference Assets.[19]

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

A. Generic Listing Standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

To list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act[22] and Rule 19b–4 thereunder.[23] However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

The Commission has previously approved generic listing standards pursuant to Rule 19b–4(e) for Investment Company Units based on the performance of fixed income securities and notes that such standards are substantially similar to those proposed to be applicable to Fixed Income Index-Linked Securities.[24] In addition, with respect to the proposed generic listing standards for Multifactor Index-Linked Securities, the Commission has previously approved generic listing standards pursuant to Rule 19b–4(e) for Investment Company Units based on the performance of a combination of assets.[25] The Commission also notes that the proposed generic standards applicable to Futures-Linked Securities are substantively identical to those currently applicable to Commodity-Linked Securities with respect to the pricing information for the respective

[17] *See supra* note 14.

[18] The Exchange notes that not all of the instruments underlying Index-Linked Securities may trade on exchanges that are members or affiliate members of ISG.

[19] The Exchange states that Equity Index-Linked Securities and Fixed Income Index-Linked Securities are not explicitly included in Commentary .01 to NYSE Arca Rule 5.2(j)(6) because such securities are already subject to the requirements of NYSE Arca Equities Rule 7.26 (Limitations on Dealings).

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(1).

[23] 17 CFR 240.19b–4.

[24] *See* Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) (setting forth the generic listing and trading standards for Investment Company Units based on fixed income securities); *see supra* note 8 and accompanying text.

[25] *See* Commentary .03 to NYSE Arca Equities Rule 5.2(j)(3) (setting forth the generic listing and trading standards for Investment Company Units based on a combination of assets representing equity and fixed income securities and requiring that each index or portfolio of equity or fixed income component securities separately satisfy its own applicable generic criteria for listing and trading pursuant to Rule 19b–4(e)).

underlying assets.[26] Lastly, the Commission notes that the proposed continued listing standards for each of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantively identical to those standards currently applicable to other Index-Linked Securities.[27]

In approving these securities for Exchange trading, the Commission considered applicable Exchange rules that govern their trading. The Commission believes that generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities should fulfill the intended objective of Rule 19b–4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.[28] The Exchange's ability to rely on Rule 19b–4(e) to list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

B. Listing and Trading Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

Taken together, the Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities pursuant to Rule 19b–4(e) on the Exchange. Products listed and traded under the proposed generic standards will be subject to the full panoply of NYSE Arca Equities rules and procedures that currently govern the trading of equity securities on the Exchange.

The listing requirements under NYSE Arca Equities Rule 5.2(j)(6)(A), which set forth criteria applicable to all Index-Linked Securities, will apply to Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities under the proposed rule change.[29] With respect to Fixed Income Index-Linked Securities, the definition of Fixed Income Reference Asset includes the same types of fixed income securities that may underlie Investment Company Units under Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).[30] In addition, the Exchange's proposed eligibility criteria for Fixed Income Reference Assets, which are substantively identical to the criteria applicable to fixed income-based Investment Company Units, include, among other things, minimum standards relating to original principal amount outstanding for each component of the Fixed Income Reference Asset, maximum concentration limits for each such component, and minimum number of non-affiliated issuers of such components.[31] The Commission believes that these requirements should help to ensure that the underlying components of a Fixed Income Reference Asset are adequately capitalized, sufficiently liquid, and diversified. In addition, the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day.

In the case of Futures-Linked Securities, the underlying asset must either be an index of (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing, or (2) interest rate futures, or options on, or derivatives of, such interest rate futures. In addition, as with Commodity Reference Assets, Futures Reference Assets to which Futures-Linked Securities are linked must either have been reviewed and approved for trading by the Commission or the pricing information of their underlying components must be derived from certain required sources, subject to exceptions.[32] These requirements should help to ensure that the components comprising a Futures Reference Asset are adequately transparent and subject to rules and standards of applicable exchanges that trade such components and that the Exchange is able to obtain information with respect to disruptions in, or unusual trading of, such components.[33] To enhance the transparency of such Futures-Linked Securities, the proposal also would require (1) the value of the Futures Reference Asset to be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session, (2) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of such securities to be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

In the case of Multifactor Index-Linked Securities, the Multifactor Reference Asset may be comprised of any combination of two or more Reference Assets and a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. As stated earlier, the Commission notes that the proposed generic standards applicable to Multifactor Index-Linked Securities are substantially similar to those standards applicable to Investment Company Units that are based on a combination of equity and fixed income securities in that each underlying Reference Asset must satisfy its own applicable minimum criteria and standards for the listing and trading of a series of Multifactor Index-Linked Securities. In addition, under the proposed rule change, (1) the value of the Multifactor Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time such securities trade on the Exchange, and (2) in the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value must be calculated and widely disseminated on at least a 15-second basis during the time such securities trade on the Exchange.

The Exchange has also developed continued listing criteria that would require it to commence delisting or removal proceedings in circumstances that make further dealings in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

[26] *See* NYSE Arca Equities Rule 5.2(j)(6)(B)(II); *see also infra* note 38 and accompanying text.

[27] *See supra* note 12.

[28] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of Index-Linked Securities.

[29] *See* NYSE Arca Equities Rule 5.2(j)(6)(A) (providing, among other things, minimum tangible net worth requirements of each issuer of Index-Linked Securities, and minimum distribution and holder, principal amount/market value, and term thresholds for each issuance of such securities).

[30] *Compare* proposed NYSE Arca Equities Rule 5.2(j)(6)(iv) with Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

[31] *See supra* note 8.

[32] *See infra* note 38 and accompanying text.

[33] *See id.*

inadvisable.[34] The Commission notes that such standards are substantively identical to those continued listing standards currently applicable to other Index-Linked Securities, and the Commission believes that such delisting criteria should help ensure the maintenance of fair and orderly markets for such securities. The Commission further notes that, under the proposal, if the indicative value or Reference Asset value applicable to a series of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities is not disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Such provisions relating to trading halts currently apply to Index-Linked Securities, and the Commission believes that the trading halt requirements promote the availability of key information for the benefit investors and other market participants.[35]

Lastly, the Commission notes that the proposal would make conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) relating to the obligations of an Exchange ETP Holder acting as a registered Market Maker.[36] Specifically, the proposal would extend the application of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to Futures-Linked Securities and Multifactor Index-Linked Securities, to the extent such securities are composed, in part, of Commodity, Currency, or Futures Reference Assets. The Commission believes that this proposal should deter conflicts of interest and the use of material, non-public information with respect to ETP Holders that engage in transactions that involve Futures-Linked Securities and certain Multifactor Index-Linked Securities and the relevant components that underlie such securities.[37]

C. Surveillance

The Commission notes that Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities would be subject to the Exchange's existing surveillance procedures applicable to derivative products (including Index-Linked Securities). The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities listed pursuant to these proposed generic listing standards in all trading sessions and to deter and detect violations of Exchange rules. In addition, the Commission notes that, with respect to the proposed Fixed Income-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, the Exchange has represented that it will be able to obtain information from those markets that are full members or affiliate members of the ISG and that the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission further notes that, for Futures-Linked Securities, the pricing information for components of a Futures Reference Asset must be derived from a market that is an ISG member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement, subject to certain exceptions.[38]

D. Information Circular

The Exchange has represented that, upon evaluating the nature and complexity of each Fixed Income Index-Linked Security, Futures-Linked Security, and Multifactor Index-Linked Security, it will prepare and distribute, as appropriate, an Information Circular to ETP Holders describing the product, the particular structure of the product, and the corresponding risks of the Index-Linked Security traded on the Exchange. In addition, the Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities to customers and the prospectus delivery requirements for such products. The Information Circular will also identify and describe the Exchange's trading rules governing the trading of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities and will discuss the risks involved in trading such securities during the Opening and Late Trading Sessions when an updated indicative value or Reference Asset value, as applicable, will not be calculated or publicly disseminated.[39]

E. Firewall Procedures

Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, like other Index-Linked Securities, will be subject to the existing firewall requirements under NYSE Arca Equities Rule 5.2(j)(6)(C). The firewall requirements provide that, if the value of an Index-Linked Security is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

Furthermore, as provided in existing NYSE Arca Equities Rule 5.2(j)(6)(C), any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NYSEArca–2008–20), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

[34] *See* proposed NYSE Arca Equities Rules 5.2(j)(6)(B)(IV)(3), 5.2(j)(6)(B)(V)(2), and 5.2(j)(6)(B)(VI)(3) (providing that the Exchange will commence delisting or removal proceedings for any series of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, respectively, if: (a) Any of the applicable initial listing criteria are not continuously maintained; (b) the aggregate market value or the principal amount of the applicable security publicly held is less than $400,000; (c) the value of the applicable Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless such new Reference Asset meets the applicable requirements under NYSE Arca Equities Rule 5.2(j)(6); and (d) such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings inadvisable).

[35] *See* NYSE Arca Equities Rule 5.2(j)(6)(E).

[36] *See* Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) (setting forth, among other things, restrictions on dealings of ETP Holders acting as registered Market Makers, requirements relating to restrictions to the flow of material, non-public information, and obligations relating to the maintenance of certain accounts and books and records).

[37] *See supra* note 19.

[38] *See* proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(V)(1)(b) (providing that the Futures Reference Asset may not include components representing more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that are neither ISG members or parties to a comprehensive surveillance sharing agreement with the Exchange and that no such single component may exceed 7% of the dollar weight of the Futures Reference Asset).

[39] *See supra* note 14.

[40] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57699; File No. SR–CHX–2008–02]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend Its Bylaws Relating to the Definition of a Public Director

April 23, 2008.

I. Introduction

On February 26, 2008, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of ''Public Director'' in the Exchange's Bylaws. The proposed rule change was published for comment in the **Federal Register** on March 17, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange's Bylaws currently define a ''Public Director'' as a director who (i) is not a participant, or an officer, managing member, partner or employee of an entity that is a participant, (ii) is not an employee of CHX or any of its affiliates; (iii) is not a broker or dealer or an officer or employee of a broker or dealer; or (iv) does not have any other material business relationship with (a) CHX Holdings, Inc., CHX, or any of their affiliates, or (b) any broker or dealer.[4]

The Exchange proposes to amend the definition of ''Public Director.''[5] Specifically, the Exchange proposes to exclude from the definition of ''Public Director,'' a director who (1) is a broker or dealer that is registered under the Act; (2) is an officer or employee of a broker or dealer that is registered under the Act; or (3) has any other material business relationship with CHX Holdings Inc. (''CHX Holdings'') or CHX or any of their affiliates, or any broker or dealer that is registered under the Act.[6] Thus, the proposed rule change may permit a person to serve as a Public Director if he or she is a foreign broker or dealer or an officer or employee of such a foreign broker or dealer,[7] provided that such person has no material business relationship with CHX Holdings or CHX or any of their affiliates or with any broker or dealer that is registered under the Act, and meets the other criteria of the Exchange's definition of Public Director.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to 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 a national market system and, in general, to protect investors and the public interest.[9]

The Commission believes that CHX's proposed change to the definition of ''Public Director'' is similar to the director independence standards approved by the Commission for another self-regulatory organization.[10] The Commission also notes that, although a broker or dealer that is not registered under the Act, or an officer or employee of such broker or dealer, no longer would be categorically prohibited from serving as a Public Director on CHX's board of directors, the Exchange must still determine, before any such person is nominated for a Public Director position, that such person otherwise meets the Exchange's definition of Public Director.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2008–02) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9334 Filed 4–28–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57697; File No. SR–NYSEArca–2008–32]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Minor Rule Plan

April 22, 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 18, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On April 17, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to amend Rule 10.12 (Minor Rule Plan) (''MRP'') and other related rules that underlie the minor rules violations, including Rules

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[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57464 (March 11, 2008), 73 FR 14286.

[4] *See* Article II, Section 2(b) of the Exchange's Bylaws.

[5] *See* proposed Article II, Section 2(b)(iii) and 2(b)(iv) of the Exchange's Bylaws.

[6] *See id.*

[7] Section 15(a) of the Act generally requires that any broker or dealer using the mails or any means or instrumentality of interstate commerce must register as a broker-dealer with the Commission, unless it is subject to an applicable exception or exemption. 15 U.S.C. 78o(a)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] *See* Independence Policy of the NYSE Euronext Board of Directors, Independence Qualifications, Section 1(c), which provides that, in considering the independence of a director, the board must consider whether the director has any relationships or interests in any non-member broker-dealers that are registered under the Act, in addition to other criteria. The Commission notes that the New York Stock Exchange LLC, NYSE Market, Inc., and NYSE Regulation, Inc. apply the Independence Policy of NYSE Euronext to their respective boards. *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 71 FR 8033 (February 22, 2007).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

5.2(b)(1) (Applications to List), 6.1 (Adherence to Law), 6.15 (Miscellaneous Prohibitions), 6.18 (Supervision), and 9.2(c) (Customer Records).

The text of the proposed rule change is available at NYSE Arca's principal office, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 Minor Rule Plan fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by ETP Holders and associated persons. The Corporation's enforcement staff has found that the MRP is particularly useful in reducing both the number and extent of rule violations because Rule 10.12 enables staff to promptly impose a limited but meaningful financial penalty soon after the violations are detected. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of ETP Holders who have engaged in inadvertent or otherwise minor violations of the Corporation's rules, particularly those who may not pay attention to mere warnings that they are violating Exchange rules. By promptly imposing a meaningful financial penalty for such violations, the MRP helps such ETP Holders focus on correcting their conduct before it gives rise to more serious enforcement action.

The last amendments to Rule 10.12 were approved in 2004.[3] Since then, new and altered patterns of activity by ETP Holders, as well as numerous additions and amendments to other Exchange rules, have created the need for numerous additions and updates to the MRP and underlying rules, as described in greater detail below. The changes are designed to update Rule 10.12 to encompass appropriate new types of violations, as well as to update or otherwise correct existing MRP provisions and further clarify the circumstances in which use of the MRP is appropriate.

The MRP will continue to be used for inadvertent and occasional rule violations. Serious violations of Exchange rules will continue to be addressed through formal enforcement action.

Rule 10.12—Minor Rule Plan

Rule 10.12(e)—Minor Rule Plan

The Corporation proposes to clarify that any person or organization found in violation of a minor rule under Rule 10.12 is not required to report such violation on SEC Form BD or Form U–4.

Rule 10.12(f)—Minor Rule Plan

The Corporation seeks to amend Rule 10.12(f) to remove the provision stating that the Business Conduct Committee (''BCC'') shall review ''each citation'' of the MRP citation. When the NYSE Arca equity rules were first drafted based upon the NYSE Arca options rules, this provision was not removed. The provision should have been removed because there is no such concept of ''floor citations'' under the equity rules. As a result, the Exchange seeks to correct 10.12(f) now and remove the provision from the rule.

10.12(g)—Minor Rule Plan: Minor Trading Rule Violations; 10.12(h)—Minor Rule Plan: Record Keeping and Other Minor Rule Violations

The Corporation proposes to amend Rule 10.12(g) to add several minor violations related to trading rule violations and subsection (h) related to record keeping and other violations. Corporation staff frequently encounters inadvertent or otherwise minor violations of certain trading rules, including Rules 6.2(g), 6.15(b), 7.20(a), 7.23(a)(1), 7.29, 7.30, and 7.38(c), and certain recordkeeping and other rules, including Rules 2.16(b), 2.21, 2.23, 2.24, 5.2(b)(1), 6.3, 6.17, 6.18, and 9.2. Such minor violations do not give rise to formal enforcement action. However, staff believes that it can further enhance compliance with these rules by imposing MRP fines, which will draw ETP Holders' attention to the need for improved compliance by promptly imposing meaningful but limited financial penalties for violations.

10.12(i)—Minor Rule Plan: Recommended Fine Schedule

The Corporation proposes to change the procedure set forth in the MRP fine schedules to escalate MRP fine levels in cases involving multiple instances of the same offense. This change will enhance the fair administration of the MRP in the context of higher speed and volume of electronic trading on the NYSE Arca Marketplace.

Currently, the MRP Recommended Fine Schedule sets forth an initial MRP fine for a ''First Violation,'' as well as a higher level for a ''Second Violation'' and a still higher level for a ''Third Violation.'' This escalation plan, which predates the widespread use of electronic trading on the Exchange, has led to several difficulties when applied to the much greater speed and volume of electronic trading.

First, while the fine escalation is meant to deter repeat offenses, it often fails to deliver this effect, because Permit Holders engaged in the high speed and volume of electronic trading can frequently incur ''second'' and ''third'' offenses before they are sanctioned or even notified of the initial violation. For the same reason, these Permit Holders complain that it is unfair for them to incur escalated fine levels for second and third violations before they learn of their first violations.

Additionally, the current fine schedule does not allow an MRP sanction for any more than three violations. In some cases, this is appropriate, but in other cases, it makes sense to impose an MRP fine for the fourth violation as for the first three. The MRP can best assist the Exchange's regulatory and enforcement efforts if it provides Exchange officials with discretion to determine how to address particular instances of multiple violations, rather than implicitly requiring formal enforcement action whenever there are more than three violations.

To address these concerns, the Exchange proposes to modify the Recommended Fine Schedules in NYSE Arca Equities Rule 10.12(i) so that MRP fines are escalated based not on the number of ''violations,'' but upon the number of times the Exchange has imposed one or more MRP fines upon a Permit Holder for the violation of a particular rule. The three current column headers in the Fine Schedules that specify different fine levels for first, second, and third ''violations'' will be replaced with ''First Level,'' ''Second Level,'' and ''Third Level.''

With this change, the Fine Schedule will continue to specify the fine to be

[3] *See* Securities Exchange Act Release No. 50356 (September 13, 2004), 69 FR 56259 (September 20, 2004) (SR–PCX–2004–29).

imposed for each violation, but the first time a Permit Holder is fined under the MRP for the violation of a given rule, the fine for each violation will be imposed at the ''First Level,'' whether there is one or more than one such violation.

Example

Due to a systems breakdown that goes undiscovered for an entire afternoon, an ETP Holder with no previous rules violations executes three sell orders on the Exchange that are not properly labeled ''short,'' as required by NYSE Arca Equities Rule 7.16(b). Under the current MRP Fine Schedule in NYSE Arca Equities Rule 10.12(i)(1), the ETP Holder would be charged under the MRP with a first violation fine of $500, as well as a second violation fine of $1,000, and a third violation fine of $2,500, for a total MRP fine of $4,000. The escalation for the second and third offenses would be imposed under the current Fine Schedule even though all the violations occurred in the same afternoon, and the second and third violations occurred before the ETP Holder became aware of the first violation.

By contrast, under the proposed Fine Schedule, the fines no longer escalate based upon the number of offenses, but instead based on the number of times the ETP Holder has been fined for the same offense. Because the ETP Holder here had not previously been fined for violations of Rule 7.16, the ETP Holder would receive the ''First Level'' of $500 per violation for each of the three violations, for a total MRP fine of $1,500.

If the ETP Holder were later fined again under the MRP for more such violations, the fine for each violation would then be $1,000.

This proposed new procedure for escalating MRP fines is largely the same as the escalation procedure specified by the New York Stock Exchange in its ''List of Exchange Rule Violations and Fines'' for imposing summary fines pursuant to NYSE Rule 476A.

It will continue to be the case that nothing in the MRP will require the imposition of a MRP fine when Exchange enforcement officials believe that repeat violations or other aggravating factors warrant formal enforcement action.

Other Changes to Rule 10.12(i)

The fines for the proposed minor rule violations in subsections (g) and (h) are reflected in the Recommended Fine Schedule in Rule 10.12(i). NYSE Arca Equities staff believes that the proposed fines are fair in relation to the scope and occurrence of the MRP violation by an ETP Holder.

The Corporation has also proposed to amend Rule 10.12(i)(2) to include a new footnote 2. Rule 2.21 (employee registration) requires ETP Holders to pay certain fees to the Corporation. Footnote 2 permits the Corporation to require violators of Rule 2.21 to remit all fees that it should have paid to the Exchange pursuant to compliance with Rule 2.21. The Corporation has based this proposed amendment upon a similar provision of the Boston Stock Exchange's MRP for violation of trade-through rules, which was recently approved by the Commission.[4]

NYSE Arca Equities Rule 2.21 requires an ETP Holder to continually disclose to the Corporation through the registration process the ETP Holder's personnel who are responsible for trading decisions on behalf of the ETP Holder. By requiring such disclosure, Rule 2.21, like the trade-through rules, substantially protects the Corporation's ability to regulate its marketplace and help ensure marketplace integrity. Corporation staff proposes to include the back-payment of registration fees in addition to a MRP fine so that the MRP can effectively deter ETP Holders from trying to save money and effort by not registering their appropriate personnel.

In addition to the changes proposed to the MRP, the Corporation also proposes the following related changes.

Rule 5.2(b)(1)—Notification Requirements for Offering of Securities

The Corporation proposes amendments to correct a scrivener's error that was inadvertently created when the NYSE Arca Rules were updated to replace the obsolete term ''Member'' with the replacement term ''ETP Holder.'' The intended reference in this rule, however, is to all members of a syndicate, which is related to compliance with Regulation M, so we propose to reinsert the correct term ''members.''

Rule 6.1—Adherence to Law and Good Business Practices

The proposed rule change clarifies the language of the newly designated Rule 6.1(a) by substituting the word ''just'' for ''fair.'' The Corporation proposes to adopt Rule 6.1(b) and make violations of the rule eligible for MRP disposition. New subsection (b) to Rule 6.1 would require all ETP Holders, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business operations. This Rule is patterned on the current NYSE Rule 401(a). Like NYSE Rule 401(a), it encompasses miscellaneous conduct that is inconsistent with the maintenance of a fair and orderly marketplace or that otherwise violates good business practices without also showing the bad faith or unethical conduct that have been found to be essential elements of ''conduct inconsistent with just and equitable principles of trade,'' as that standard has been clarified in decisions such as *In re. Calvin David Fox*.[5]

Rule 6.15—Miscellaneous Prohibitions

The Corporation proposes to add a subsection (c) that will expressly prohibit transactions in a security that involves no change in beneficial ownership, commonly known as ''wash trades.'' This filing also proposes to make violation of the wash trade prohibition eligible for disposition through an MRP fine. Exchange Market Regulation has observed a trend toward increasing amounts of wash trading. Much of this trading may be unintentional or otherwise resulting from circumstances that do not rise to the level of prearranged trading or other purposeful market manipulation. However, even inadvertent wash trading can create an exaggerated or otherwise false appearance of trading activity in the affected securities. The Corporation proposes to halt this trend by expressly prohibiting wash trading. By also including this violation among those eligible for disposition through MRP fines, Exchange Market Regulation and Enforcement will have the flexibility to impose appropriate fine levels based upon the particular circumstances of each individual case.

Rule 6.18—Supervision

The Corporation proposes to amend Rule 6.18 to remove language that limits the reach of its supervisory rules. The current language of Rule 6.18(b) provides that only ETP Holders for whom the Corporation is the Designated Examining Authority (''DEA'') are subject to its supervisory requirements. The amendment removes the language limiting the scope of the rule so that all ETP Holders regardless of DEA are subject to maintaining systems to supervise activities of their associated persons and the operations of their businesses.

As noted above, this filing also proposes to make minor violations of

[4] *See* Securities Exchange Act Release No. 55606 (April 10, 2007), 72 FR 19221 (April 17, 2007) (approving SR–BSE–2006–11).

[5] *See* Securities Exchange Act Release No. 48731, 81 SEC Docket 1511–31 (October 31, 2003).

Rule 6.18 eligible for disposition through an MRP fine. Exchange Market Regulation frequently encounters ''minor'' supervisory failures by Permit Holders, *i.e.*, supervisory failures whose consequences have not yet risen to a level justifying formal enforcement action, but which could have serious consequences if not remedied. By making such failures eligible for MRP fines, Exchange Market Regulation and Enforcement will have a greater ability to encourage ETP Holders to correct their supervisory problems before they lead to more serious violations.

To further enhance the ability of the Exchange to use the MRP to improve Permit Holder supervisory procedures and overall compliance on a prospective basis, the filing proposes to add a new footnote 1 to the MRP Fine Schedule that will allow Exchange enforcement staff, as part of an MRP disposition of certain supervisory-related offenses, not only to impose a monetary fine, but also to require the violator to make specified changes to its supervisory or other compliance procedures. This will enable Exchange enforcement staff to negotiate, as part of an MRP disposition of a supervisory violation, a requirement that the violator undertake certain remedial measures to ensure that such violations do not recur, as is already done in some formal enforcement actions for such offenses.

Rule 7.38(c)—Odd and Mixed Lots—Prohibitions

The Corporation proposes to delete language in the current subsection (c) of Rule 7.38 that presently defines all odd-lot violations to be conduct inconsistent with just and equitable principles of trade. The Corporation believes that this change keeps Rule 7.38(c) consistent with current Commission caselaw because many violations of Exchange odd-lot rules do not necessarily involve the bad faith or unethical conduct, which has been determined to be required for a finding of ''conduct inconsistent with just and equitable principles of trade,'' as that standard has been clarified by the Commission in decisions such as *In re. Calvin David Fox*.[6] This and other changes in this filing would also permit minor odd-lot violations to be disposed of through the MRP.

Rule 9.2(c)—Customer Records

The Corporation proposes to change Rule 9.2(c) by adding the single word ''current,'' to clarify and reiterate the obligation that firms with customer accounts must not only keep records of their customer accounts, but also keep them current.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–32 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–2008–32. 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 NYSE Arca. 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–2008–32 and should be submitted on or before May 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9289 Filed 4–28–08; 8:45 am]

BILLING CODE 8010–01–P

[6] *See id.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57700; File No. SR–NYSEArca–2008–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of Three Exchange-Traded Funds of the NETS Trust

April 23, 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 15, 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 and II below, which Items have been substantially prepared by the Exchange. On April 22, 2008, NYSE Arca submitted Amendment No. 1 to the proposed rule change. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to list and trade shares (''Shares'') of the following funds of the NETS Trust (''Trust''): NETS BEL 20 Index Fund (Belgium), NETS AEX-index Fund (The Netherlands) and NETS PSI 20 Index Fund (Portugal). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the following funds under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs''):[5] NETS BEL 20 Index Fund (Belgium), NETS AEX-index Fund (The Netherlands) and NETS PSI 20 Index Fund (Portugal) (each a ''Fund,'' and collectively, the ''Funds'').

Each Fund is an ''index fund'' that seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of a particular index (its ''Underlying Index'' or ''Index''). The NETS ™ BEL 20® Index Fund (Belgium) seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities listed on Euronext Brussels, as represented by the BEL 20. The NETS ™ AEX-index® Fund (The Netherlands) seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Dutch market, as represented by the AEX-index. The NETS ™ PSI 20® Index Fund (Portugal) seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Portuguese market, as represented by the PSI 20®.

The Exchange submits this proposed rule change because the Underlying Index for each Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes or portfolios. The Underlying Indexes meet all such requirements except for those set forth in Commentary .01(a)(B)(3).[6] The Exchange represents that: (1) Except for Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Funds currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Act[7] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, the rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.[8]

Detailed descriptions of the Funds, the Underlying Indexes, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Trust's Registration Statement[9] or on the Web site for the Funds (*http://www.netsetfs.com*), as applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[6] Specifically, each of the Underlying Indexes fails to meet the requirement that the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index. As of March 7, 2008, the five most heavily weighted component stocks represented 62.1%, 60.4% and 62.9% of the Index weight for each of the BEL 20, AEX-index, and PSI 20, respectively.

[7] 17 CFR 240.10A–3.

[8] *See, e.g.*, Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (order approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of ICUs). E-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated April 23, 2008.

[9] *See* the Trust's Registration Statement on Form N–1A, dated February 13, 2008 (File Nos. 333–147077 and 811–22140).

[10] 15 U.S.C. 78f(b).

of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade the Shares immediately. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange also believes that the proposal is non-controversial because, although each of the Underlying Indexes fails to meet the requirements set forth in Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) by small amounts (2.1%, 0.4%, and 2.9%), the Shares currently satisfy all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), and will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs. Additionally, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs.[14]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Given that the Shares comply with all of the NYSE Arca Equities generic listing standards for ICUs (except for narrowly missing the requirement relating to the five highest weighted components of the respective Index), the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–42 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–2008–42. 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–2008–42 and should be submitted on or before May 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9321 Filed 4–28–08; 8:45 am]

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[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] *See supra* note 8 and accompanying text.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 22, 2008, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57703; File No. SR–Phlx–2008–31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Changes to Phlx's Governing Documents in Connection With the Acquisition of Phlx by the Nasdaq Stock Market, Inc.

April 23, 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 21, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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 Phlx proposes to: (1) Amend the Exchange's Restated Certificate of Incorporation (''Certificate of Incorporation''), By-Laws, and Rules of the Board of Governors (''Rules''), and adopt certain Rules to reflect changes in connection with the proposed acquisition of the Exchange by The Nasdaq Stock Market, Inc. now known as The NASDAQ OMX Group, Inc. (''NASDAQ OMX''); and (2) update certain language and make other minor, technical amendments to the Certificate of Incorporation, By-Laws, and Rules. The Exchange also requests Commission approval for an affiliation between the Exchange and certain broker-dealer subsidiaries of the NASDAQ OMX, as described herein. The Exchange requests that the proposed rule change become operative upon consummation of the Nasdaq OMX Merger.[3]

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.Phlx.com/exchange/phlx_rule_fil.htm*. The text of Exhibits 5A through 5C of the proposed rule change is also available on the Commission's Web site (*http://www.sec.gov/rules/sro/phlx.shtml*).

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

On November 7, 2007, NASDAQ OMX announced that it had entered into an agreement with the Exchange pursuant to which NASDAQ OMX would acquire all of the outstanding capital stock of the Exchange. In connection with this acquisition, Pinnacle Merger Corp., a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, would be merged with and into the Exchange, with the Exchange surviving the merger (''NASDAQ OMX Merger'').[4] As a result of the NASDAQ OMX Merger, all of the Exchange's common stock would be owned by NASDAQ OMX; Phlx shareholders would receive cash consideration for their shares and would not retain any ownership interest in the Exchange.

Thereafter, NASDAQ OMX would operate the Exchange as a wholly-owned subsidiary. The Exchange would continue to be registered as a national securities exchange, with separate Rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of The NASDAQ Stock Market LLC (the ''NASDAQ Exchange''). Additionally, the Exchange would continue to be a separate self-regulatory organization (''SRO'').

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation, By-Laws, and Rules to reflect NASDAQ OMX's proposed ownership of the Exchange. Most of the amendments reflect the Exchange's new ownership structure and some are designed to conform Phlx's governance provisions to those that are currently applicable to the NASDAQ Exchange. These revised governance provisions collectively regulate the Exchange and its directors, officers, and employees in light of its ownership by NASDAQ OMX, and, among other things, are designed to preserve the Exchange's independent Board of Governors (''Board'').

a. Stock

Specifically, Article SECOND of the Certificate of Incorporation would be updated to reflect the address of the Exchange's registered office. Article FOURTH would be amended to: (1) Reduce the amount of Common Stock that the Exchange has authority to issue to 100 shares; (2) eliminate the designation of Class A and Class B Common Stock;[5] and (3) reduce the amount of Preferred Stock that the Exchange has authority to issue to 100 shares. Of the 100 shares of Preferred Stock that may be issued, there would continue to be one share that is designated as Series A Preferred Stock.[6]

All of the authorized shares of Common Stock shall be issued and outstanding, and shall initially be held by NASDAQ OMX. The Exchange would not issue additional Preferred Stock, other than the existing one share of Series A Preferred Stock, unless the resolution(s) providing for the issuance of such Preferred Stock has been filed with and approved by the Commission under Section 19 of the Act[7] and the rules promulgated thereunder. Additionally, Common Stock and Preferred Stock (including the Series A Preferred Stock) may not be transferred or assigned, in whole or in part, to any entity, unless such transfer shall be filed with and approved by the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, on April 23, 2008.

[4] The NASDAQ OMX Merger is defined as the merger of a wholly owned subsidiary of NASDAQ OMX with and into the Exchange, with the Exchange as the surviving corporation, in connection with the acquisition of the Exchange by NASDAQ OMX. *See* proposed By-Law Article I, Section 1–1(ii).

[5] *See* similar changes to current Exchange By-Law Article I, Section 1–1(d).

[6] The one authorized share of Series A Preferred stock is currently issued and outstanding, and held by the Trust pursuant to the Trust Agreement. *See* By-Law Article I, Section 1–1(ee) and proposed Section 1–1(mm). At this time, there are no other outstanding shares of Preferred Stock. The single share of Series A Preferred stock is held by the Trust for the purpose of electing those ''Designated Governors'' voted for by Phlx Members as provided in By-Law Articles I and III. Pursuant to the Trust Agreement, the Holder of the Series A Preferred Stock is required to elect the nominees for Governor elected by the Members. The NASDAQ OMX Merger would not result in a transfer of ownership of the Series A Preferred Stock.

[7] 15 U.S.C. 78s.

under Section 19 of the Act[8] and the rules promulgated thereunder.[9]

Additional changes to the Certificate of Incorporation are being proposed in connection with Common Stock dividend rights,[10] voting rights,[11] required notice by stockholders to the Exchange of Common Stock ownership in excess of certain thresholds,[12] ownership concentration limits,[13] and automatic conversion of Class A Common Stock.[14] These changes are being made to delete language customarily applicable to non-public companies with several stockholders, which is no longer necessary because NASDAQ OMX would become the sole holder of Common Stock.

b. Board

With respect to the composition of the board of directors, the Exchange's Board is currently composed of the Chairman of the Board, who is the individual holding the office of the Chief Executive Officer of the Exchange, and 22 other Governors, consisting of two Governors who are Member Governors, one Governor who is a Philadelphia Board of Trade® (''PBOT'')[15] Governor, six Governors who are Stockholder Governors, 12 Governors who are Independent Governors, and one Governor who is the Vice-Chairman of the Board.[16] The Exchange proposes to amend the current composition of the Board so that the number and qualifications of the Governors would be fixed from time to time by the Board in accordance with the By-Laws. The Board would be composed of a majority of Independent Governors.[17] Specifically, the Board would include one Governor who is the Chief Executive Officer of the Exchange, one Governor who is the Vice-Chair of the Board,[18] one PBOT Governor,[19] one Member Governor,[20] one Stockholder Governor,[21] and a number of Designated Independent Governors.[22] The Designated Governors (*i.e.*, Designated Independent Governors, the Member Governor, and the PBOT Governor)[23] are intended to comply with the requirement in Section 6(b)(3) of the Act,[24] which requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of an exchange, broker, or dealer (the ''fair representation requirement''). The Designated Independent Governors, together with the Member Governor and the PBOT Governor, would equal at least 20% of the total number of Governors. All remaining Governors would be Independent Governors. A Governor would be permitted to fill only one position on the Board.

In terms of the election process, the Designated Governors would be elected by the vote of the holder of the Series A Preferred Stock (*i.e.*, the ''Trust'') in accordance with the results of the vote of Members conducted under By-Law Article III. All other Governors (*i.e.*, Independent Governors, Vice-Chair, Chief Executive Officer, and Shareholder Governor) would be elected by a plurality vote of the holder of Common Stock (*i.e.*, NASDAQ OMX). All Governors would be elected for terms of one year as recommended by NASDAQ OMX to conform with its understanding of current corporate best practices by allowing frequent review of the performance of all Governors.[25]

Article SIXTH would also be amended to provide that Governors, other than Designated Governors, may be removed with or without cause by vote of the holder of the Common Stock (*i.e.*, NASDAQ OMX). This change would reflect the Exchange's proposed status as a wholly-owned subsidiary of NASDAQ OMX. Provisions governing the removal of Designated Governors would be simplified to make it clear that such removal may be made with or without cause but requires a vote of Member Organization Representatives under By-Law Article III. A new Article SEVENTH would provide that the stockholders (*i.e.*, NASDAQ OMX) may act by unanimous written consent, again reflecting the Exchange's proposed status as a wholly-owned subsidiary.

c. By-Laws

The proposed amendments to the By-Laws include changes to conform to changes proposed for the Certificate of Incorporation, such as the simplification of the Exchange's capital structure and restrictions on stock transfer and the changes to the composition of the Board described above. With regard to the composition of the Board immediately following a closing of the NASDAQ OMX Merger, amended By-Law Article IV, Section 4–3 would provide that the directors of Pinnacle Merger Corporation, Inc. (the ''Merger Subsidiary''), the wholly-owned subsidiary of NASDAQ OMX that would be merged with and into the Exchange through the NASDAQ OMX Merger, would become the Board of Governors of the Exchange immediately after the effective time of the NASDAQ OMX Merger. The directors of the Merger Subsidiary would satisfy the compositional requirements of the

[8] *Id.*

[9] *See* proposed Certificate of Incorporation, Article FOURTH, and proposed By-Law Article XXIX, Section 29–4.

[10] *See* proposed Article FOURTH, (c)(ii).

[11] *See* proposed Article FOURTH, (c)(iii).

[12] *See* Article FOURTH, (c)(iv).

[13] *See* Article FOURTH, (c)(v).

[14] *See* Article FOURTH, (c)(vi).

[15] The Philadelphia Board of Trade® is Phlx's futures exchange subsidiary, and at this time, would continue to operate as such after the NASDAQ OMX merger.

[16] *See* By-Law Article IV, Section 4–1.

[17] *See* proposed Certificate of Incorporation Article SIXTH and By-Law Article IV, Section 4–1. ''Independent Governor'' would continue to be defined as a Governor who is a person affirmatively determined by the Board as having no Material Relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. *See* By-Law, Article I, Sections 1–1(f), 1–1(o) and (p).

[18] The Vice-Chair would continue to be an individual who, anytime within the prior three years, has been a Member primarily engaged in business on the Exchange's equity market or equity options market or who is a general partner, executive officer (vice-president or above) or a Member associated with a Member Organization primarily engaged in business on the Exchange's equity market or equity options market. *See* By-Law Article V, Section 5–3.

[19] A PBOT Governor would continue to be defined as a Governor who is a member of PBOT and is duly elected to fill the one vacancy on the Board allocated to the PBOT Governor. *See* By-Law Article I, Section 1–1(aa).

[20] A Member Governor would continue to be defined as a Governor who is a Member or a general partner or an executive officer (vice-president and above) of a Member Organization and is duly elected to fill the vacancy on the Board allocated to the Member Governor. *See* By-Law Article I, Section 1–1(u).

[21] A Stockholder Governor is defined as a Governor who is an officer, director (or a person in a similar position in business entities that are not corporations), designee or an employee of a holder of Common Stock or any affiliate or subsidiary of such holder of Common Stock and is duly elected to fill the vacancy on the Board allocated to the Stockholder Governor. *See* By-Law Article I, Section 1–1(hh), and Article IV, Section 4–1 and proposed language in Certificate of Incorporation Article SIXTH.

[22] ''Designated Independent Governors'' would continue to be defined as those Independent Governors who are elected by the holder of the Series A Preferred Stock in accordance with Article SIXTH of the Certificate of Incorporation. *See* By-Law Article I, Section 1–1(f).

[23] The term ''designated'' refers to a governor who is elected by the Holder of Series A Preferred Stock to reflect the vote of the Members. *See also* proposed changes to Article FOURTH of the Exchange's Certificate of Incorporation and By-Law Article I, Sections 1–1(e) and (f).

[24] 15 U.S.C. 78f(b)(3).

[25] Currently, Phlx Governors are divided into three classes. Each such class is constituted by election or appointment each year to serve for three years and until their successors are elected and qualify. Except for the Chairman and Vice-Chairman of the Board, Governors do not serve more than two consecutive full three-year terms. *See* By-Law Article IV, Section 4–3.

Exchange Board contained in the proposed By-Laws, as determined by NASDAQ OMX. The Designated Governors serving immediately after the effective time of the NASDAQ OMX Merger would consist of certain directors of the Merger Subsidiary who had been serving as Designated Governors of the Exchange immediately before the effective time of the NASDAQ OMX Merger, as selected by NASDAQ OMX.

Article III, Section 3–3(a), Removal of Designated Governors, currently provides that Designated Governors may be removed only for cause, unless a majority of the Board recommends that one or more Designated Governors be removed in accordance with Section 4–4 of the By-Laws, in which case such Designated Governor(s) may be removed without cause. In either case, removal of the Designated Governor requires a vote by Member Organization Representatives at an annual or special meeting. As proposed to be amended, Section 3–3 would provide that Designated Governors may be removed, with or without cause, only by vote of Member Organization Representatives at an annual or special meeting.[26]

Article IV, Section 4–4, Duties and Powers, provides that in the event of the refusal or failure of any Governor to discharge his duties or for any reason deemed sufficient by the Board, the Board may, by the affirmative vote of a majority of Governors then in office, recommend to the Stockholders (and in the case of a Designated Governor, the Members) that such Governor be removed and call a special meeting of the Stockholders[27] (and, in the case of a Designated Governor, a special meeting of the Members and Member Organizations and subsequently a special meeting of the holder of the Series A Preferred Stock, who shall be required to vote in accordance with Article SIXTH of the Certificate of Incorporation and the Trust Agreement) for the purpose of voting on such removal. The Exchange believes that the process set forth in Article IV, Section 4–4, remains an appropriate and suitable process for the Board to address the refusal or failure of a Governor elected by the Members to discharge his duties. Thus, in all cases, authority to remove Designated Governors would rest with the Members pursuant to Section 3–3, but the Board could recommend removal and call a special meeting under Section 4–4.

Article IV, Section 4–17, Interpretation of By-Laws, would be amended to clarify that the Board shall determine whether an interpretation of the By-Laws and the Rules must be filed with the Commission as a proposed rule change, and if so, then such change would not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act[28] and the rules promulgated thereunder.

Article IV, Section 4–21, Annual Financial Report, would be amended to reflect that the Board of Governors would no longer send out annual financial reports as described in Section 4–21. However, annual financial reports of the Exchange would continue to be available at the Exchange and would also be reflected in the public consolidated financial statements of NASDAQ OMX.

Article V of the By-Laws would be amended to set forth in detail the powers and duties relating to the Chair, Vice-Chair, and officers of the Exchange. Specifically, the Exchange proposes to insert language in By-Law Article V, Section 5–1, Board's Appointive Powers, to state that the Board would appoint the officers of the Exchange as provided in the By-Laws and shall fix their duties, responsibilities, and terms of employment. Additionally, language would be added to Section 5–2, Chair of the Board of Governors, to set forth the powers of the Chair of the Board and to establish that the Board would select its Chair from among the members of the Board who are Independent Governors. Proposed Sections 5–4, Chief Executive Officer, and 5–5, President, set forth the duties and powers of these officers of the Exchange.[29]

Article VI, Equity Stock Compensation, Section 6–1, Stock Incentive and Option Plans, would be deleted as this provision is no longer applicable due to the fact that NASDAQ OMX would be the sole owner of the Exchange's Common Stock and any potential equity stock compensation is likely to consist of NASDAQ OMX stock rather than Phlx stock.

Additionally, By-Law Article IX, Trustees of Stock Exchange Fund, Sections 9–1 through 9–6 would be deleted, as these provisions are no longer deemed necessary after the acquisition of the Exchange by NASDAQ OMX.[30] The change reflects a simplification of the Exchange's financial management, under which the Exchange's assets would be subject to the oversight of the Board rather than separate trustees and also subject to public company financial controls established by NASDAQ OMX.[31]

d. Standing Committees

Generally, the Standing Committees of the Board would remain the same, except as discussed below. By-Law Article X, Standing Committees, would also be updated to reflect the elimination of the Automation Committee and Marketing Committee, as these committees are deemed no longer necessary at this time because automation and marketing would be guided and handled at the parent company level. Additionally, the responsibilities of the Audit Committee would be updated to conform with similar responsibilities and processes of the Audit Committees of NASDAQ OMX and the NASDAQ Exchange.[32] The composition of the Executive Committee and the Finance Committee would be amended to reflect the proposed changes to the composition of the Board.

Several Exchange committees that currently review proposed rule changes may review such proposals before the proposals are presented to either the Executive Committee[33] or the Board for approval for filing with the Commission.[34] These committees on

[26] A special meeting could be called by Members or the Board. *See* By-Law Article III, Section 3–2(b).

[27] This action may also be taken without a meeting. *See* proposed By-Law Article XXVIII, Section 28–13 (providing for Stockholder action without a meeting).

[28] 15 U.S.C. 78s.

[29] These provisions are consistent with current NASDAQ OMX By-Law Article VII, and NASDAQ Exchange By-Law Article IV.

[30] The purpose of the Stock Exchange Fund was to appoint trustees to manage the investment of certain funds of the Exchange and collect interest, dividends and income from the funds for the Exchange.

[31] The applicable references to the Stock Exchange Fund in Article IV, Section 4–4, Duties and Powers, Removal of governors or trustees of gratuity fund and stock exchange for cause, would also be deleted and this section would be updated to reflect that there is no longer a gratuity fund.

[32] *See* NASDAQ OMX Audit Committee Charter approved April 18, 2007 and NASDAQ Exchange By-Law Article III.

[33] The Executive Committee currently consists of nine Governors; the Chairman of the Board; the Vice-Chairman of the Board; the Chairman of the Finance Committee; the Chairmen of two floor committees; two Stockholder Governors; and two Independent Governors. *See* By-Law Article X, Section 10–14. As proposed herein, the Executive Committee would be amended so that it would consist of the Chair of the Board, the Vice-Chair of the Board, the Stockholder Governor, a number of designated Governors equal to at least 20% of the total number of Governors on the Executive Committee, and such other Governors as the Board may appoint. *See* proposed By-Law Article X, Section 10–14.

[34] Members using XLE (the Exchange's equity trading system) are represented on the Exchange's Board through the exercise of their voting rights for members of the Board. Currently, there is no designated committee that reviews proposed rule

Continued

which Exchange members serve would continue to perform this function after the NASDAQ OMX merger. For example, the Business Conduct Committee (''BCC'') may review proposed changes to the disciplinary Rules that are set forth in Exchange Rule 960 before these Rules are presented to the Executive Committee or the Board. The BCC currently consists (and will continue to consist) of nine members as follows: three Independent Governors; one Member or person associated with a Member Organization who conducts business on XLE; one Member who conducts options business at the Exchange; and four persons who are Members or persons associated with a Member Organization.[35]

Furthermore, the Options Committee makes or recommends for adoption such Rules as it deems necessary for the convenient and orderly transaction of business upon the equity and index options trading floor, as well as makes and enforces Rules and regulations relating to order, decorum, health, safety and welfare on the equity and index options trading floor and the immediately adjacent premises of the Exchange. Fifty percent of the Members of the Options Committee are permit holders or associated with a Member Organization.[36] Thus, Member representation on Exchange committees would continue.

Additionally, By-Law Article X, Section 10–15, Finance Committee, would be amended such that the Chair of the Finance Committee would be the Chair of the Board and would no longer be either the Vice-Chair, Stockholder Governor or Member Governor. The Exchange also proposes to amend the description of the composition of the Finance Committee members to allow any Member or persons associated with a Member Organization, who conducts business on XLE to be a member of the Committee. Currently, the language states, in part, that the Finance Committee shall include two Members or persons associated with a Member Organization, who may be Governors, one of whom conducts business primarily on XLE or on the equity options floor. Although this proposed change is not directly related to the NASDAQ OMX Merger, the Exchange proposes to delete the word ''primarily'' in order to allow a greater pool of candidates to be eligible to serve on the Finance Committee.[37]

The purpose of deleting the supplementary material in Section 10–15 is to reflect the updated responsibilities of the Finance Committee.[38] The Board would establish capital expenditure policies, which may include delegation to Board committees and/or officers, but would no longer reflect these policies in the By-Laws. This reflects a more flexible approach, consistent with NASDAQ OMX's processes and the functions of a public company parent.

Also, in By-Law Article X, Section 10–19, Nominating, Elections and Governance Committee, the Exchange proposes to delete the term limit applicable to this Committee and delete the prohibition on Committee members standing for re-election to the Board. These changes are designed to increase the pool of candidates eligible to serve on the Committee and the Board. Moreover, the deletion of these restrictions is also supported by the fact that all Board members, including those serving on the Committee, would serve for one-year terms and would therefore have their qualifications for continued Board service under more frequent review.

In addition, the Nominating, Elections and Governance Committee would no longer select all Chairs of the Standing Committees in accordance with Article X. The Board would now appoint a person to fill any vacancy in a Standing Committee, including Chairs, except for the Chair of the Executive Committee, the Chair of the Nominating, Elections and Governance Committee and the Chair of the Finance Committee.[39] This change reflects a general philosophy that the full Board should have control over the composition of Standing Committees, including the selection of their Chairs and is consistent with how NASDAQ OMX currently operates.[40]

Additionally, in By-Law Article X, Section 10–21, the Exchange proposes to clarify the composition of the Quality of Markets Committee by specifically stating that the members of this Committee would include at least as many Independent members as it does the ''combined number'' of Stockholder-chosen members[41] and members who are Members of the Exchange.[42] The Exchange believes that adding the language ''combined number'' should clarify that the number of Stockholder-chosen Committee members[43] are added to the number of Members serving on the Committee[44] and that total is then compared to the number of ''Independent'' Committee members (not to be confused with ''Independent Governors,'' which also rely on the definition of ''Independent'' in By-Law Article I, Section 1–1(o)).

In addition, the Exchange proposes to adopt for the Quality of Markets Committee a ''fair representation requirement'' consistent with Section 6(b)(3) of the Act,[45] which requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. This language is intended to ensure fair Member representation on the Quality of Markets Committee.[46]

By-Law Article XI, Section 11–1(b) would be amended to delete references to a ''special committee of the Board of Governors'' that hears appeals from determinations of the Nominating, Elections and Governance Committee regarding eligibility for election to the Board. The special committee had been composed of Governors not then standing for re-election. However, because the proposed amendments to Section 4–3 eliminate the ''staggering'' of the Board, requiring all Governors to be elected annually, it would not be possible to form such a special

changes covering equity Rules. The Board or Executive Committee performs this function.

[35] *See* By-Law Article X, Section 10–11.

[36] *See* By-Law Article X, Section 10–20.

[37] This proposed change is consistent with a recent By-Law change to Section 10–11, Business Conduct Committee, relating to the composition of the Business Conduct Committee. In that proposal, the Exchange expanded the type of business that may be conducted to qualify as a BCC member. *See* Securities Exchange Act Release No. 57023 (December 20, 2007), 72 FR 74398 (December 31, 2007) (SR–Phlx–2007–83).

[38] Currently, the supplementary material relates to directives that are applicable to the Finance Committee in the exercise of its duties, powers and authority under the By-Laws. For example, the supplementary material states that the Finance Committee may authorize certain expenditures of any budgeted line items; may delegate to the staff of the Exchange so much of its authority to make expenditures as it deems appropriate; and shall perform its functions and act with the same powers and limitations for the Exchange and all subsidiaries of the Exchange. *See* By-Law Article X, Section 10–15, Supplementary Material.

[39] Pursuant to the By-Laws, the Chair of the Board is the Chair of the Executive Committee and the Finance Committee and the Chair of the Nominating, Elections and Governance Committee is selected from among the members of such Committee who are Independent Governors. *See* By-Law Article X, Sections 10–14(a), 10–15 and 10–19(a).

[40] *See* NASDAQ OMX By-Law Article IV, Section 4.13.

[41] *See* By-Law Article I, Section 1–1(gg).

[42] *See* By-Law Article I, Section 1–1(t).

[43] NASDAQ OMX, as Stockholder, would select the Stockholder member(s) of this Committee, subject to Board approval pursuant to By-Law Article X, Section 10–1(b).

[44] The Board would select the Member(s) serving on the Committee pursuant to By-Law Article X, Section 10–1(b).

[45] 15 U.S.C. 78f(b)(3).

[46] This provision is similar to the NASDAQ Exchange's Quality of Markets Committee. *See* NASDAQ Exchange By-Law Article III, Section 6.

committee. Now that the Exchange proposes to reduce the size of its Board, the Exchange believes that at this time, it would be more practical for the full Board to hear an appeal pursuant to Section 11–1(b) because all Governors would stand for re-election annually.

In By-Law Sections 13–5, Liability of Officers, Directors and Substantial Stockholders, 13–7, Violation of Terms of Registration, 17–4, Time for Settlement of Insolvent Member or Participant, Extension, and 18–3, Responsibility of Member or Participant for Acts of His Organization, references to receiving an affirmative vote of either 14 or 15 Governors (which used to represent a supermajority) would be changed to require an affirmative vote of a majority of all Governors. This change is necessary as the number of Board members may be reduced after the NASDAQ OMX Merger and therefore a vote of 14 or 15 Governors may no longer be possible.

Article XXII, Amending the By-Laws, would be amended to state affirmatively that By-Law amendments must be filed with, and/or approved by, the Commission as required under Section 19 of the Act [47] and that the holders of a majority of the shares of Common Stock then issued and outstanding must affirmatively vote for By-Law amendments.

Article XXVIII, Section 28–3, Nomination of Chairman and Vice-Chairman of the Board of Governors; Independent Nominations by Stockholders; Election of Nominees for Stockholder and Independent Governors, currently provides for a nomination process in connection with nominating and electing the above-referenced individuals. The Exchange proposes to amend Section 28–3 to reflect that the Holder of Common Stock would present to the Nominating, Elections and Governance Committee its candidate recommendations for Vice-Chair, Shareholder Governor and Independent Governors for placement on the ballot for election by the Holder of Common Stock at the annual meeting of Stockholders. These nominees would be placed on the ballot and elected by the Holder of Common Stock. Additionally, the Board would now appoint the Chair from among the members of the Board who are Independent Governors.[48] This approach is consistent with the NASDAQ Exchange's processes for nomination of non-Member Representative Directors by a nominating committee that may seek the input and recommendations of NASDAQ OMX as the owner of the NASDAQ Exchange.[49]

Article XXVIII, proposed Section 28–13, Action Without Meeting, sets forth provisions relating to action that may be taken without a meeting and the accompanying requirements relating to taking such action. This provision sets forth specifically that any action required or permitted to be taken at any annual or special meeting of Stockholders may be taken by Stockholders without a meeting as set forth in detail in Section 28–13, unless otherwise specified in the Certificate of Incorporation of the Exchange. This language should assist in providing greater flexibility in connection with taking any action required or permitted to be taken at any annual or special meeting of Stockholders and is consistent with proposed Article SEVENTH of the Exchange's Certificate of Incorporation.

Article XXIX, Capital Stock, would be updated. The proposed changes to Sections 29–1 through 29–7 are similar to NASDAQ OMX By-Law Article IX, Capital Stock, Sections 9.1 through 9.7, reflect standard provisions for a Delaware stock corporation and also reflect the contemplated ownership of all Common Stock by NASDAQ OMX. Existing provisions in Article XXIX that contemplated a possible public offering of the Exchange's stock would be deleted and replaced with restrictions on stock transfer comparable to the restrictions included in the Certificate of Incorporation and discussed above. Additionally, proposed Section 29–8, Dividends, is similar to Section 15 of the LLC Agreement of the NASDAQ Exchange, and prohibits the Exchange from using Regulatory Funds to pay dividends.[50]

Additionally, further changes to the Certificate of Incorporation and By-Laws would be made to correct typographical errors and to update the language to more accurately reflect current practices. For example, the language relating to how the Exchange's Weekly Bulletin is distributed would be updated to not restrict its distribution to mail, but rather to permit distribution by e-mail and posting on the Exchange's Web site.[51] As a second example, references to ''Chairman'' would be replaced with ''Chair.'' Additionally, references to the ''director'' of either the Membership Services or Examinations Departments in Sections 17–1, Suspension for Insolvency on Declaration, and 17–3, Investigation of Insolvency, would be deleted in favor of more general references to the departments. Therefore, notices would still be required to be sent to these departments, but not necessarily to the director. This change should allow more flexibility in connection with sending notices to these departments.

e. Rules

The Exchange also proposes to amend the following current Exchange Rules: (1) Rule 1, Definitions; (2) Rule 98, Emergency Committee; (3) Rule 164, Trading Halts; and (4) Rule 972, Continuation of Status After the Merger. More specifically, the Exchange proposes to update Rule 1, Definitions, to include a definition of the NASDAQ OMX Merger, which will apply to Rule 972.

Rule 98, Emergency Committee, is proposed to be amended to reflect that the Board shall establish the Emergency Committee and determine its composition, which not only revises the members that comprise the Committee, but allows for greater flexibility in appointing members to this Committee. Currently, the Emergency Committee consists of the following: the Chairman of the Board, the On-Floor Vice-Chairman of the Exchange, the Off-Floor Vice-Chairman of the Exchange (this position, however, no longer exists and reference to this position was inadvertently not deleted previously from Rule 98), and the Chairmen of the Options and Foreign Currency Options Committees.

Rule 164, Trading Halts, is proposed to be amended to provide that the officers of the Exchange designated by the Board shall have the power to suspend trading in any and all securities traded on XLE whenever in their opinion such suspension would be in the public interest. Currently, only the Chairman and Chief Executive Officer or his designee has the authority to suspend trading pursuant to Rule 164. Under this proposal, there would no longer be one position entitled ''Chairman and Chief Executive Officer.'' Accordingly, the proposed change allows for greater flexibility in designating individuals responsible for declaring any trading halts and updates the rule to reflect the proposed revisions

[47] 15 U.S.C. 78s.

[48] *See* proposed By-Law Article V, Section 5–2.

[49] *See* NASDAQ Exchange By-Law Article III, Section 6.

[50] ''Regulatory Funds'' are defined as fees, fines, or penalties derived from the regulatory operations of the Exchange. However, ''Regulatory Funds'' shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. *See* proposed By-Law Article I, Section 1–1(kk).

[51] *See, e.g.*, By-Law Article XII, Section 12–5(d).

relating to the officers of the Exchange.[52]

Proposed Rule 972, Continuation of Status After the NASDAQ OMX Merger, is being amended to reflect that current members, [53] inactive nominees, member organizations, foreign currency options participants, foreign currency options participant organizations, as well as approved lessors of foreign currency options participations holding such status prior to the NASDAQ OMX Merger would continue to hold such status following the NASDAQ OMX Merger. This provision was adopted in connection with and currently refers to the Exchange's 2004 demutualization.[54] It is being amended to refer specifically to the proposed NASDAQ OMX merger and to serve the same purpose as the original provision, which is to make clear that the merger does not affect membership status generally.

Additionally, the Exchange proposes to adopt two new Rules that would reflect its status as a wholly-owned subsidiary of NASDAQ OMX upon the effectiveness of the NASDAQ OMX Merger. The purpose of the Rules is to guard against any possibility that the Exchange may exercise, or forebear to exercise, regulatory authority with respect to an affiliated entity in a manner that is influenced by commercial considerations, to provide an opportunity for Commission review of certain proposed affiliations, and to ensure that certain affiliated members do not receive advantaged access to information in comparison with unaffiliated members. The Exchange believes that the proposed Rules would provide added assurance of regulatory integrity without subjecting the Exchange and its affiliates to unwarranted restrictions on their commercial activities.

First, the Exchange proposes to adopt Rule 990, which is comparable to NASDAQ Exchange Rule 4370. The rule provides that if a security issued by NASDAQ OMX or any of its affiliates is listed on the Exchange, the Exchange will apply special procedures to the regulation of that listing, including reporting to the Commission and conducting an annual independent audit of the security's compliance with Exchange listing standards.

Second, proposed Exchange Rule 985(a) would limit ownership of NASDAQ OMX's voting securities by members of the Exchange and their associated persons (*i.e.*, their registered representatives). The Rule is comparable to Rule 2130 of the NASDAQ Exchange, and provides that no member or associated person of a member shall be the beneficial owner of greater than 20% of the then-outstanding voting securities of NASDAQ OMX. ''Beneficial ownership'' is defined with reference to NASDAQ OMX's certificate of incorporation, which in turn provides that a person shall be deemed the ''beneficial owner'' of, shall be deemed to have ''beneficial ownership'' of and shall be deemed to ''beneficially own'' any securities: (i) Which such person or any of such person's affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d–3 under the Act; [55] (ii) subject to certain narrow exceptions described in the certificate of incorporation, which such person or any of such person's affiliates has the right to acquire or to vote pursuant to any agreement, arrangement, or understanding or otherwise; or (iii) subject to certain narrow exceptions described in the certificate of incorporation, which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's affiliates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of such securities.

Third, proposed Exchange Rule 985(b) would regulate the affiliation between the Exchange and its affiliates, on the one hand, and Exchange members, on the other hand, in a manner comparable to Rule 2140 of the NASDAQ Exchange. In general, the proposed rule provides that the Exchange must file a proposed rule change with the Commission before the Exchange or an entity with which it is affiliated directly or indirectly acquires or maintains an ownership interest in, or engages in a business venture with, an Exchange member or an affiliate of an Exchange member.[56] The rule defines ''affiliate'' with reference to Rule 12b–2 under the Act,[57] which provides that if one person controls, is controlled by, or is under common control of another person, the persons are affiliates.

The proposed rule would make it clear that in a case where the Exchange or an affiliate of the Exchange proposes an acquisition of, or a merger or business venture with, an Exchange member, a proposed rule change would be required. In order to make it clear that the obligation to avoid affiliations that have not been filed is imposed by the rule both on the Exchange and its members, moreover, the rule provides that an Exchange member shall not be or become an affiliate of the Exchange, or an affiliate of any entity affiliated with the Exchange, without a proposed rule change.

The term ''business venture,'' as used in the rule, is defined as an arrangement under which the Exchange or an entity with which it is affiliated, on the one hand, and an Exchange member or affiliate thereof, on the other hand, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts. Thus, the term does not include, and the proposed rule does not regulate, contracts with members or their affiliates to provide goods, products, or services for consideration, including, but not limited to, asset or stock purchase agreements that do not result in ongoing ties with a member or its affiliates,[58] credit or debt facilities, licenses of intellectual property, contracts for investment banking, financial advisory, or consulting services,[59] or the provision of transaction services or data to a broker-dealer member or products or services to a listed company that is or that owns a member broker-dealer.

The rule limits possible expansive interpretations of the term ''affiliate'' by stipulating that one entity is not deemed to be an affiliate of another entity solely by virtue of having a common director. For example, if one of the Governors of the Exchange is also a director of an Exchange member, that member would not be deemed to be an affiliate of the Exchange solely because of the common director. In addition, the rule should not be construed to regulate in any manner

[52] *See* proposed By-Law Article V, Sections 5–1 through 5–5.

[53] The term ''member,'' defined in Rule 1(n), is not capitalized, unlike the Exchange's By-Laws.

[54] *See* Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73).

[55] Rule 13d–3 under the Act, 17 CFR 240.13d–3, in turn provides that a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power or investment power.

[56] As used in the rule, the term ''affiliate'' includes natural persons, but the term ''entity,'' when used to describe an affiliate, excludes natural persons.

[57] 17 CFR 240.12b–2.

[58] For example, in the case of an acquisition of a non-Membersubsidiary of a Member in a transaction that did not result in an ongoing affiliation with the Member, the transaction would not be regulated by the rule.

[59] In some cases, such contracts may involve sharing of confidential information with a Member in circumstances where a Member acts as a fiduciary for Phlx or one of its affiliates. The Member would be required to take measures to prevent such information from being misused, and a failure to do so may constitute a violation of Rules, including, depending on the circumstances, Exchange Rules 707, 708, and 1020.

the selection of Governors or standing committee members of the Exchange, NASDAQ OMX, the NASDAQ Exchange, or their affiliates, provided such selections are conducted in accordance with applicable provisions of governing corporate documents.

In circumstances where a Commission filing is required, the rule allows the Exchange to file, in appropriate cases, a proposed rule change on an immediately effective basis under Section 19(b)(3)(A) of the Act[60] and Rule 19b–4(f) thereunder.[61] For example, in cases where a proposed affiliation or business venture would not result in the establishment of a ''facility'' of the Exchange within the meaning of Section 3 of the Act,[62] a filing to establish Rules to govern the operation of the affiliate or business venture would not be required or appropriate. Rather, in such circumstances, the Exchange would expect to engage in informal consultation with the Commission's Division of Trading and Markets and/or members of the Commission, and would then submit a filing to amend the rule itself, to establish that the affiliation or business venture could exist as an exception to the rule. Depending on the circumstances, such a filing might be submitted on an immediately effective basis.

There are also several important exceptions to the general filing requirement of the rule. First, the rule would not require a filing for transactions that result in an Exchange member acquiring or holding an interest in NASDAQ OMX that is consistent with Rule 985(a) (discussed above). Second, no filing would be required for the Exchange or an entity affiliated with the Exchange acquiring or maintaining an ownership interest in, or engaging in a business venture with, an affiliate of an Exchange member if there are information barriers between the member and the Exchange and its facilities, such that the member: (i) Would not be provided an informational advantage concerning the operation of the Exchange and its facilities, and would not be provided changes or improvements to the trading system that are not available to the industry generally or other Exchange members; (ii) would not have knowledge in advance of other members of proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities, including advance knowledge of Exchange filings pursuant to Section 19(b) of the Act;[63] (iii) would be notified of any proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities in the same manner as other Exchange members are notified; and (iv) would not share employees, office space, or databases with the Exchange or its facilities, NASDAQ OMX, or any entity that is controlled by NASDAQ OMX.[64] The Exchange's Board must certify, on an annual basis, to the Director of the Commission's Division of Trading and Markets that the Exchange has taken all reasonable steps to implement the foregoing requirements with respect to any affiliate to which they apply and is in compliance therewith.

This exception is aimed at circumstances in which the Exchange or an affiliated entity acquires, or enters into a business venture with, an affiliate of an Exchange member, and the Exchange erects information barriers between the member and the Exchange and its facilities. Thus, the Exchange ensures that the member does not receive any advantage as a result of its affiliation.

In connection with the adoption of this rule, the Exchange hereby requests Commission approval under the rule for the affiliation that would result by virtue of the merger between the Exchange and the two broker-dealer subsidiaries of the NASDAQ Exchange: Nasdaq Execution Services, LLC (''NES'') and NASDAQ Options Services, LLC (''NOS''). The acquisition of the entities that are now NES and NOS by NASDAQ OMX was approved by the Commission in 2004 and 2005.[65] The rules under which NES currently routes orders to other market centers were approved by the Commission in 2006 and subsequently amended on several occasions.[66] Notably, NASDAQ Exchange Rule 4758(b) establishes the parameters for operation of NES as follows: (1) All routing of equities by the NASDAQ Exchange is performed by NES, which, in turn, routes orders to other market centers as directed by the NASDAQ Exchange; (2) NES would not engage in any business other than: (a) As a outbound router for the NASDAQ Exchange, and (b) any other activities it may engage in as approved by the Commission; (3) NES would operate as a facility, as defined in Section 3(a)(2) of the Act,[67] of the NASDAQ Exchange; (4) for purposes of Rule 17d–1 under the Act,[68] the designated examining authority of NES would be a self-regulatory organization unaffiliated with the NASDAQ Exchange or any of its affiliates; (5) the NASDAQ Exchange shall be responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, NES, and NES shall be subject to exchange non-discrimination requirements; (6) the books, records, premises, officers, agents, directors and employees of NES, as a facility of the NASDAQ Exchange, shall be deemed to be the books, records, premises, officers, agents, directors and employees of the NASDAQ Exchange for purposes of, and subject to oversight pursuant to, the Act, and the books and records of NES, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the Commission; and (7) use of NES is optional.

Currently, routing by NES on behalf of the NASDAQ Exchange takes two forms: (i) Orders that access any liquidity on the NASDAQ Exchange book that has a price equal to or superior to the prices available on other ''automated market centers'' and thereafter route to seek the best available price; and (ii) routing of ''directed orders'' to automated market centers other than the NASDAQ Exchange on an ''immediate-or-cancel'' basis. Such directed orders may be designated as ''intermarket sweep orders,'' which may be executed by the receiving venue based on the representation of the market participant that it has routed to all superior

[60] 15 U.S.C. 78s(b)(3)(A).

[61] 17 CFR 240.19b–4(f).

[62] 15 U.S.C. 78c.

[63] 15 U.S.C. 78s(b).

[64] Phlx would not construe these limitations to bar an employee of an affiliated member from serving on a Phlx standing committee, since: (i) Such committee members would be required to sign confidentiality agreements with regard to information received through committee service; and (ii) the committee member employed by the affiliate would receive information provided through committee service at the same time as other committee members.

[65] *See* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System).

[66] *See* Securities Exchange Act Release Nos. 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–07–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ–2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

[67] 15 U.S.C. 78c(a)(2).

[68] 17 CFR 240.17d–1.

protected quotations, or not so designated, in which case the orders will execute only if their execution would not result in a trade-through.

NOS serves as the outbound router for the Nasdaq Options Market (''NOM''), which commenced operations on March 31, 2008. Under Rule Chapter VI, Section 11 for NOM,[69] (1) NOM will route orders in options via NOS, which serves as the sole ''Routing Facility'' of NOM; (2) the sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer; (4) the Routing Facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; [70] (5) NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the Routing Facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the NASDAQ Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the NASDAQ Exchange for purposes of and subject to oversight pursuant to the Act, and the books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

Unlike NES, NOS does not have a ''directed order'' for options that are trading on NOM; rather, all routable orders for options that are trading on NOM check the NOM book prior to routing. However, NOS also routes orders in options that are not trading on NOM. When routing orders in options that are not listed and open for trading on NOM, NOS will not be regulated as a facility of the NASDAQ Exchange but rather as a broker-dealer regulated by its designated examining authority. However, as provided by Chapter IV, Section 5 of the NOM rules, all orders routed by NOS under these circumstances will be routed to away markets that are at the best price, and solely on an immediate-or-cancel basis.

Although not explicitly stated in Chapter VI, Section 11 of the NOM Rules, NOS, like NES, will be subject to exchange non-discrimination requirements, and the use of NOS will be optional.[71] In addition, NOS will not engage in any business other than the activities approved by the Commission in the NOM Approval Order and such other activities as may be approved by the Commission at a later date.

In order to further restrict the interaction between the Exchange and NES and NOS, the NASDAQ Exchange has agreed that it will, prior to the closing of the NASDAQ OMX Merger, amend its rules to change the routing practices of NES and NOS. With respect to NES, directed orders will not be eligible for routing to Exchange facilities. With respect to NOS, when routing orders in options that are not listed and open for trading on NOM, NOS will not route to Exchange facilities. Routing of orders that check the NASDAQ Exchange and NOM books prior to routing will continue and such orders may be routed to the Exchange as appropriate.

The Exchange notes that at a later date, the Exchange may opt to use NES and/or NOS to route on behalf of the Exchange.[72] Such future uses of NES or NOS would be reflected in filings to establish the terms and conditions of such routing, but would not allow for routing of directed orders to the NASDAQ Exchange, NOM, or any other affiliated exchange or trading facility thereof.[73]

In light of the foregoing facts and circumstances, in accordance with proposed Exchange Rule 985(b)(i)(B), the Exchange proposes that NES and NOS be permitted to become affiliates of the Exchange subject to the following:

- With respect to NES, NES remains a facility of the NASDAQ Exchange; use of NES's routing function by NASDAQ Exchange members continues to be optional; and NES does not provide routing of directed orders to the Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the NASDAQ Exchange book.
- With respect to NOS, NOS remains a facility of the NASDAQ Exchange; use of NOS's Routing Facility function by NASDAQ Exchange members continues to be optional; and NOS does not provide routing of orders in options that are not listed and open for trading on NOM to the Exchange or any trading facilities thereof.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [74] in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act [75] in particular, in that it is designed to enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and Rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[69] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and –080) (the ''NOM Approval Order'').

[70] 15 U.S.C. 78s.

[71] Consistent with this restriction, Chapter VI, Section 11 of the NOM rules provides that routing will be based on the user's instructions and that a participant can designate an order as not available for routing.

[72] Currently, the Exchange uses PRO Securities LLC (''PRO'') to route equity orders. PRO is a wholly-owned subsidiary of Order Execution Services Holdings, Inc. The Exchange routes options orders through the Intermarket Option Linkage system.

[73] In this regard, it should be noted that both the New York StockExchange and the NYSE Arca use NYSE Arca's broker-dealer subsidiary to perform routing.

[74] 15 U.S.C. 78f(b).

[75] 15 U.S.C. 78f(b)(1) and (b)(5).

(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 in the **Federal Register**. The Commission is considering the Exchange's request to grant accelerated approval of the proposed rule change following the conclusion of the 21-day comment period.

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–Phlx–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–Phlx–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–Phlx–2008–31 and should be submitted on or before May 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9323 Filed 4–28–08; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6201]

Notice of Availability of the Draft Environmental Assessment for the Proposed Frontera Juarez Pipeline Project

AGENCY: Department of State.

ACTION: Notice of Availability of the Draft Environmental Assessment (EA) for the Proposed Frontera Juarez Pipeline Project.

A draft Environmental Assessment (EA) for the Proposed Frontera Juarez Pipeline Project has been prepared by P.M.I. Services North America (''PMI'') in support of its application to the Department for a Presidential permit. On January 18, 2008, The Department of State received an application from PMI for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, as amended, to construct, connect, operate, and maintain facilities at the border for a 10.75-inch diameter liquid hydrocarbon (gasoline and diesel) pipeline at the U.S.-Mexico border near San Elizario, Texas, for the purpose of transporting gasoline and diesel between the United States and Mexico. PMI has stated that it seeks this authorization in connection with its Frontera Juarez Pipeline Project (''Frontera''), which is designed to transport gasoline and diesel from the Longhorn Partners Pipeline Terminal in El Paso County, Texas, to the U.S.-Mexico border near San Elizario, Texas.

The Secretary of State is designated and empowered to receive all applications for Presidential permits, as referred to in Executive Order 13337, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country.

On March 26, 2008, the Department of State published in the **Federal Register** a Notice of Receipt of the PMI application and of intent to prepare an Environmental Assessment (EA), soliciting public comments on the application. In accordance with section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (*42 U.S.C. 4332(C)*) and implementing regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500–1508) and the Department of State (22 CFR part 161), including in particular *22 CFR 161.7(c)(1)*, a draft environmental assessment (EA) was prepared by PMI to determine if there are any potential significant impacts, to address alternatives to the proposed action, and to determine possible impacts to traditional or cultural properties under section 106 of the National Historic Preservation Act. In light of public comments submitted on the application, PMI has now revised its draft EA and made it available for further review.

The purpose of this Notice of Availability is to invite public comment on the draft EA prepared by PMI. Any person wishing to comment on the draft EA may do so. To ensure consideration of comments prior to a Department of State decision on the application, it is important that we receive your comments by no later than 30 days from publication of notice. Options for submitting comments on the draft EA are as follows:

- *By mail to:* Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520. Please note that Department of State mail can be delayed due to security screening.
- *Fax to:* (202) 647–1052, attention Elizabeth Orlando.
- *E-mail to: orlandoea2@state.gov*.

In addition to or in lieu of sending written comments, the Department of State invites you to attend a public meeting in the project area to submit comments on the draft EA. A court reporter will be present and will accept comments for the record. The date and location for the public meeting is: May 7, 2008; 7 p.m. to 10 p.m. (local time). At the Lower Valley Water District, 1557 FM Road 1110, Clint, Texas 79836. (Signs will be posted at address).

After comments are reviewed, significant new issues (if any) are investigated, and modifications (if any) are made to the draft EA, a final EA will

[76] 17 CFR 200.30–3(a)(12).

be made available by the Department of State, along with the Department's determination whether a Finding of No Significant Impact (FONSI) is appropriate in this case or whether an Environmental Impact Statement (EIS) must be prepared. The final EA will contain the Department's response to timely comments received on the draft EA.

FOR FURTHER INFORMATION CONTACT: For further information, to receive a CD–ROM copy of the draft EA, or to comment on the proposed project contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, telephone 202–647–4284, facsimile 202–647–1052, e-mail *orlandoea2@state.gov*.

Issued in Washington, DC on April 22, 2008.

Stephen J. Gallogly,

Director, International Energy and Commodity Policy, Department of State.

[FR Doc. E8–9366 Filed 4–28–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 28, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–0127.

Date Filed: December 27, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 17, 2008.

Description: Application of KLM Royal Dutch Airlines, N.V. (''KLM'') requesting an amended foreign air carrier permit to enable KLM to engage in: (1) Foreign scheduled and charter air transportation of persons, property, and mail between any point or points behind any member state of the European Union via any point or point in any member state and via intermediate points to any point or points in the United States or beyond; (2) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (3) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (4) other charters pursuant to Part 212; and (5) transportation authorized by any additional route rights that may be made available to European Union carriers in the future. KLM also requests a corresponding exemption to enable it to provide the services described above pending issuance of an amendment to KLM's foreign air carrier permit.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–9317 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 21, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign AirCarrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–0084.

Date Filed: December 18, 2007 .

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2008.

Description: Application of SkyWest Airlines, Inc. requesting a certificate of public convenience and necessity authorizing SkyWest to engage in scheduled foreign air transportation of persons, property and mail, including authority to operate via the U.S. and intermediate points to a point or points within countries with which the U.S. has a bilateral or multilateral open skies agreement.

Docket Number: DOT–OST–2006–0123.

Date Filed: December 21, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 2008.

Description: Application of TAG Aviation Espana S.L. (''TAG Espana'') requesting a foreign air carrier permit to enable it to engage in: (i) Foreign charter air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charters pursuant to the prior approval requirements set forth in Part 212 of the Department's Economic Regulations; and (iv) transportation authorized by any additional route rights made available to the European Community carriers in the future. TAG Espana further requests an amendment to its existing exemption to enable it to provide the service described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: DOT–OST–2007–0124.

Date Filed: December 21, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 2008.

Description: Application of Aerolineas Mesoamericanas, S.A. de C.V., (''ALMA'') requesting a foreign air carrier permit to provide scheduled foreign air transportation of persons, property, and mail as provided for in the Air Transport Services Agreement between the U.S. and Mexico. ALMA also requests authority to engage in charter trips in foreign air transportation, as permitted by Annex II of the 2005 U.S.-Mexico Agreement, and other charters in accordance with Part 212.

Docket Number: DOT–OST–2007–0125.

Date Filed: December 21, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 2008.

Description: Application of National Aviation Company of India Limited, d/b/a Air India requesting an amended foreign air carrier permit and exemption authority to engage in scheduled foreign air transportation of persons, property, and mail from points behind India via India and intermediate points to a point or points in the United States and beyond.

Docket Number: DOT–OST–2007–0126.

Date Filed: December 19, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 2008.

Description: Application of Eos Airlines, Inc. requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–9319 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Airport Property Release at Griffin-Spalding County Airport, Griffin, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153 (c), notice is being given that the FAA is considering a request from the City of Griffin to waive the requirement that approximately .649—acres of aeronautical property, located at the Griffin-Spalding County Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before May 29, 2008.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Anna Guss, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William P Wilson, Jr, County Manager, Spalding County at the following address: Spalding County, 119 Solomon St, Griffin, GA 30224.

FOR FURTHER INFORMATION CONTACT: Anna Guss, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2260, Atlanta, GA 30337–2747, (404) 305–7146. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Griffin to release approximately .649 acres of aeronautical property at the Griffin-Spalding County Airport. The property consists of one parcel located adjacent to and north and west of the right of way at the intersection of SR 155 and Airport Road. This property is currently shown on the approved Airport Layout Plan as aeronautical use land; however, the property is currently not being used for aeronautical purposes, and the proposed use of this property is compatible with airport operations. The City will ultimately sell the property to the Georgia Department of Transportation who will utilize the property for purposes of right of way for both SR 155 and Airport Road, with proceeds of the sale providing funding for future airport development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Griffin-Spalding County Airport.

Issued in Atlanta, Georgia on March 13, 2008.

Larry F. Clark,

Acting Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. E8–9272 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Louisville/Jefferson County Metro Government

[Waiver Petition Docket Number FRA–2008–0037]

The Louisville/Jefferson County Metro Government (Louisville Metro), seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Part 222. Louisville Metro intends to establish a Pre-Rule Quiet Zone that it had previously continued under the provisions of 49 CFR 222.41(c)(1). Louisville Metro is seeking a waiver to extend the mailing date for a Notice of Intent as provided in 49 CFR 222.41(c)(2)(i)(A) that states that the Notice of Intent must be mailed by February 24, 2008. The waiver petition requests that the Notice of Intent that Louisville Metro mailed on March 26, 2008, be accepted as a valid Notice of Intent even though it was mailed after February 24, 2008.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0037) and may be submitted by any of the following methods:

Web site: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on April 23, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–9034 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–0026; Notice 2]

General Motors Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain model year 2006 and 2007 motor vehicles equipped with remote start systems that it manufactured prior to May of 2007, did not fully comply with paragraph S7.3(a)(1) of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208 *Occupant Crash Protection.* On August 27, 2007, GM filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* identifying approximately 146,360 model year 2006 and 2007 motor vehicles including Buick Lacrosse and Pontiac Grand Prix passenger cars; and Buick Terraza, Chevrolet Uplander, Pontiac Montana SV6 and Saturn Relay multipurpose passenger vehicles that do not comply with the paragraph of FMVSS No. 208 cited above.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on November 9, 2007 in the **Federal Register** (72 FR 63653). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2007–0026.''

For further information on this decision, contact Mr. Charles Case, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5319, facsimile (202) 366–5930.

GM certified these vehicles to paragraph S7.3(a)(1) of 49 CFR 571.208 which requires:

> S7.3 (a) A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that, at the option of the manufacturer, either—
>
> (1) Activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds and that activates a continuous or flashing warning light visible to the driver displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words ''Fasten Seat Belts'' or ''Fasten Belts'', for not less than 60 seconds (beginning when the vehicle ignition switch is moved to the ''on'' or the ''start'' position) when condition (b) exists simultaneously with condition (c)* * *
>
> (b) The vehicle's ignition switch is moved to the ''on'' position or to the ''start'' position.
>
> (c) The driver's lap belt is not in use, as determined, at the option of the manufacturer, either by the belt latch mechanism not being fastened, or by the belt not being extended at least 4 inches from its stowed position.

GM explains that under certain circumstances following a remote engine start that the seatbelt assembly warning system audible signal and/or the telltale warning light do not always activate as required to fully comply with FMVSS No. 208.

The vehicles in question fall into two groups. The first group contains only 2006 model year vehicles. The second group consists of a few late production 2006 multipurpose passenger vehicles and all the 2007 vehicles reported. For simplification, these groups are referenced hereafter as the 2006 and the 2007s.

GM states that when a subject vehicle's engine is started using the ignition key (not with remote start), three warning cycles are provided to unbelted occupants for the 2007 vehicles. The first warning cycle satisfies the requirements specified in FMVSS No. 208 S7.3(a)(l) for the unbuckled driver. The second and third cycles provide additional audible and telltale warnings, of the same duration required by the standard, for drivers who remain unbuckled. The 2006 vehicles receive only the first cycle of driver and passenger warnings. If at anytime the driver buckles, the warnings will cease.

GM additionally explains that in some cases, if the vehicle is started using the remote start function the seatbelt assembly warning system will not activate upon key rotation to the ''RUN'' position as specified by FMVSS No. 208 S7.3(a)(l). For both 2006 and 2007 vehicles following remote start, an audible warning will sound when the key is rotated to the ''RUN'' position, but the required telltale warning may not be provided. The length of the telltale warning for the first warning cycle is decreased by the amount of time between when the engine is started and when the key is turned to the ''RUN'' position. Therefore, a driver who uses the remote start and then quickly enters the vehicle and turns the key to ''Run'' will receive a visual warning for some period. However, a driver who uses the remote start but does not turn the key to ''RUN'' for a longer period will receive no visual warning unless the vehicle has the supplemental warning cycles. The driver, buckled or unbuckled, receives an audible warning except in the situation where the front passenger buckles between 25 and 33 seconds following the remote start (in effect buckling in response to the chime and silencing it before the driver enters the vehicle).

For the 2006 vehicles, as originally manufactured, there were no supplemental warning signal cycles. The 2007 vehicles were provided with an enhanced safety belt reminder system that will activate if front outboard occupants are not belted and the vehicle speed is above 5 miles per hour (mph). The 2007 vehicles will provide two cycles of audible and visual belt warning notice in such conditions.

GM also provided a detailed explanation of the reasons why it believes that the noncompliance is inconsequential to motor vehicle safety.

In summary, GM states that for all of the subject vehicles, the unbuckled driver receives a warning when the ignition key is turned to the ''RUN'' position essentially every time:

(1) When the vehicles are started with its ignition key, the required seat belt warnings are provided.

(2) When the 2007 vehicles and the upgraded [1] 2006 vehicles are started remotely, the unbuckled driver receives, at a minimum, the audible warning when the ignition key turned to the ''RUN'' position plus 2 cycles of visual and audible warning when the vehicle's speed reaches 5 mph.

(3) When the 2006 vehicles are started remotely, the unbuckled driver will receive, at a minimum, the audible warning.

[1] General Motors has initiated a Customer Satisfaction Program to upgrade the belt reminder system on the 2006 vehicles to provide three sets of warning cycles as implemented on the 2007 vehicles and has sent letters to the customers of those vehicles informing them about the upgrade.

The only exception where an audible warning is not provided is when the front passenger buckles between 25 and 33 seconds following the remote start (in effect buckling in response to the chime and silencing it before the driver enters the vehicle).

GM states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no further corrective action is warranted.

NHTSA Decision

The following explains our rationale.

There are two separate starting procedures for these vehicles. One uses the key to start the vehicle. The second uses the remote start feature.

Key Starting for All Vehicles

When the key is used to start the vehicle, the seat belt warning system meets the requirements of the standard because the driver receives the required visible and audible warnings when not buckled. This is the case for both the 2006 and 2007 groups of vehicles.

Remote Start With Enhanced Seat Belt Warning Systems

For the 2007 group of vehicles (and the 2006 vehicles that have been upgraded through the customer service program) using remote start, a 6-second audible and 75-second telltale warning is provided if the front outboard occupants (driver and passenger) are not belted and the vehicle speed exceeds 5 mph. These meet the time requirements of S7.3(a)(1) and provide an audible and visual warning as intended by the requirement. In addition, the warnings go beyond the requirement because (1) The visual telltale warning is on 15 seconds longer than required by the standard, (2) the warnings include the non-regulated front outboard passenger, and (3) the warnings repeat for an additional period if the front occupants do not react to the first warning. The purpose of the requirement is met because (1) both the audible and visual warnings are activated at a low enough speed that the occupants have time to react to the reminders before traveling very far and before attaining a high speed, and (2) the warnings that do activate go beyond the requirements in certain aspects.

Remote Start for Reprogrammed Seat Belt Warning Systems

For the 2006 group of vehicles using remote start, the additional warnings are not available. However, GM has instituted a Customer Satisfaction Program to reprogram these vehicles so that they have the same seat belt warning system as the 2007 vehicles discussed previously.

Remote Start for Non-Reprogrammed Seat Belt Warning Systems

GM has indicated there are 75,416 vehicles in the 2006 group that are eligible for reprogramming. GM also estimates that 50 percent of those vehicles will actually be taken to the dealer for the customer service campaign. Thus, an estimated 37,708 vehicles may eventually not have the enhanced seat belt warning system. Even in these vehicles the driver will still receive a 6-second audible warning signal that meets the requirements of FMVSS No. 208.

Exception

The final condition to consider for both the 2006 and 2007 groups is when the passenger buckles the seat belt 25 to 33 seconds after remote start. In this condition, there may be no audible warning or visual telltale. This does not appear to be a condition that is likely to happen. It would be logical to assume that the remote start normally is used for warming the engine, or warming or cooling the interior of the vehicle prior to getting in the vehicle. Since these conditions could not generally occur within 25 to 33 seconds of remote start, we estimate this condition will not likely occur during normal vehicle operation. Moreover, for this scenario to occur, the passenger must buckle the belt in a small window of time (25 to 33 seconds after a remote start) before the driver enters and turns the key to ''RUN.'' If the driver enters first and turns the key to ''RUN'' or if the passenger buckles the belt before or after the 8-second window, the audible warning, and perhaps some visual warnings will function.

Decision

Because GM has offered to provide a very helpful upgrade to the vehicles most affected by this problem, and because in all but one rare condition (which we estimate will not likely occur) there is an audible and/or visual seat belt warning, NHTSA has decided that GM has met its burden of persuasion that the seat belt warning system noncompliances described are inconsequential to motor vehicle safety. Accordingly, GM's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 22, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–9247 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–28505]

Pipeline Safety: Requests for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: The Federal pipeline safety laws allow a pipeline operator to request PHMSA to waive compliance with any part of the Federal pipeline safety regulations by granting a special permit to the operator. PHMSA is publishing this notice to provide a list of special permit requests we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. This notice seeks public comment on these requests, including comments on any environmental impacts. At the conclusion of the comment period, PHMSA will evaluate each request individually to determine whether to grant or deny a special permit.

DATES: Submit any comments regarding any of these special permit requests by May 29, 2008.

ADDRESSES: Comments should reference the docket number for the special permit request and may be submitted in the following ways:

- E-Gov Web Site: *http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: DOT Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit

request you are commenting on at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi by telephone at (404) 832–1160; or, e-mail at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has filed in the Federal docket management system at *http://www.regulations.gov* requests for special permits we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. Each request has been assigned a separate docket number. We invite interested persons to participate by reviewing these special permit requests and by submitting written comments, data or other views. Please include any comments on environmental impacts granting the special permit may have.

Before acting on any special permit request, PHMSA will evaluate all comments received on or before the comment closing date. We will consider comments received after this date if it is possible to do so without incurring additional expense or delay. We may grant a special permit or deny a request based on the comments we receive.

PHMSA has received the following special permit requests:

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2008–0066.	Columbia Gulf Transmission Company (CGT).	49 CFR 195.452(h)	To authorize CGT to operate nine pipeline segments in three sections of Mainline 100, 200 and 300 in Williamson and Davidson Counties, Tennessee without reducing the operating pressure as a result of changes from Class 1 and Class 2 locations to Class 3 locations.
PHMSA–2008–0067.	Boardwalk Pipeline Partners, LP (Boardwalk).	49 CFR 192.111, 49 CFR 192.201.	To authorize Boardwalk to construct and operate approximately 262.6 miles of two, 36-inch, natural gas transmission lateral pipelines at a maximum allowable operating pressure (MAOP) of 1250 pounds per square inch gauge (psig), which corresponds to a pipe stress level up to 80 percent of the steel pipe's specified minimum yield strength (SMYS) in Class 1 locations, 67 percent SMYS in Class 2 locations, and 56 percent SMYS in Class 3 locations. The pipelines are the 166.2-mile Fayetteville Lateral located primarily in Arkansas but crosses the Mississippi River into western Mississippi and the 96.4-mile Greenville Lateral located entirely in Mississippi.
PHMSA–2008–0068.	Gulf Crossing Pipeline Company (GCPC).	49 CFR 192.111, 49 CFR 192.201.	To authorize GCPC to construct and operate approximately 353.2 miles of a new 42-inch natural gas transmission pipeline running from Grayson County, Texas to Madison Parish, Louisiana at an MAOP of 1480 psig, which corresponds to a pipe stress level up to 80 percent of SMYS in Class 1 locations, 67 percent SMYS in Class 2 locations and 56 percent SMYS in Class 3 locations. The special permit request also includes a 17.8-mile, 42-inch, loop line from Hinds County to Simpson County, MS, which is part of the Gulf Crossing project.
PHMSA–2008–0077.	Florida Gas Transmission Company (FGT).	49 CFR 192.111, 49 CFR 192.201, 49 CFR 192.505, 49 CFR 192.611, 49 CFR 192.619.	To authorize FGT to operate certain pipeline segments along its approximately 741.2-mile mainline natural gas transmission pipeline system running from Mobile County, Alabama to Lee County, Florida at an MAOP of up to 1333 psig, which corresponds to a pipe stress level up to 80 percent of SMYS in Class 1 locations, 67 percent SMYS in Class 2 locations and 56 percent SMYS in Class 3 locations.

Authority: 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC on April 21, 2008.

Barbara Betsock,

Acting Director, Office of Regulations.

[FR Doc. E8–9259 Filed 4–28–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 11)]

Railroad Cost of Capital—2007

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2007. The decision solicits comments on: (1) The railroads' 2007 current cost of debt capital; (2) the railroads' 2007 current cost of preferred stock equity capital (if any); (3) the railroads' 2007 cost of common stock equity capital; and (4) the 2007 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than May 6, 2008. Statements of the railroads are due by May 22, 2008. Statements of other interested persons are due by June 23, 2008. Rebuttal statements by the railroads are due by July 23, 2008.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should submit a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn:* STB Ex Parte No. 558 (Sub-No. 11), 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, 202–245–0333. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.*

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: April 22, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–9352 Filed 4–28–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8878–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8878–A, IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

DATES: Written comments should be received on or before June 30, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Electronic funds Withdrawal Authorization for Form 7004.

OMB Number: 1545–1927.

Form Number: 8878–A.

Abstract: Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 140,000.

Estimated Time Per Respondent: 3 hours, 37 minutes.

Estimated Total Annual Burden Hours: 505,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 21, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–9358 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedures 2002–39, 2006–45 (Previous 2002–37), and 2006–46 (Previous 2002–38)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedures 2002–39, 2006–45, 2006–46, Changes in Periods of Accounting.

DATES: Written comments should be received on or before June 30, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Carolyn N. Brown, (202) 622–6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Changes in Periods of Accounting.

OMB Number: 1545–1786.

Revenue Procedure Numbers: Revenue Procedures 2002–39, 2006–45, and 2006–46.

Abstract: Revenue Procedures 2002–39, 2006–45, and 2006–46, provide the comprehensive administrative rules and guidance, for affected taxpayers adopting, changing, or retaining annual accounting periods, for federal income tax purposes. In order to determine whether a taxpayer has properly adopted, changed to, or retained an annual accounting period, certain information regarding the taxpayer's qualification for and use of the requested annual accounting period is required. The revenue procedures request the information necessary to make that determination when the information is not otherwise available.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization, individuals, not-for-profit institutions and farms.

Estimated Number of Respondents: 800

Estimated Average Time per Respondent: 53 minutes.

Estimated Total Annual Burden Hours: 700.

Also, the burden is reflected in the burdens of Forms 1128 and 2553.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–9370 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 4 Taxpayer Advocacy Panel (including the states of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice Correction.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 13, 2008 and Wednesday, May 14, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, May 13, 2008, 8 a.m. to 5 p.m., and Wednesday, May 14, 2008, 8 a.m. to Noon Eastern Time, in Cincinnati, OH. For more information or to confirm attendance, please contact Mary Ann Delzer. Ms. Delzer may be reached at 1–888–912–1227, or (414) 231–2360. Or you can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can post comments to the Web site at *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Dated: April 18, 2008.

Sandy McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–9357 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
April 29, 2008

Part II

Department of Homeland Security

Coast Guard

33 CFR Part 169

Long Range Identification and Tracking of Ships; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 169

[Docket No. USCG–2005–22612]

RIN 1625–AB00

Long Range Identification and Tracking of Ships

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule requires, consistent with international law, certain ships to report identifying and position data electronically. This rule implements an amendment to chapter V of the International Convention for the Safety of Life at Sea (SOLAS), regulation 19–1, and enables the Coast Guard to correlate Long Range Identification and Tracking (LRIT) data with data from other sources, detect anomalies, and heighten our overall Maritime Domain Awareness. This rule is consistent with the Coast Guard's strategic goals of maritime security and maritime safety, and the Department's strategic goals of awareness, prevention, protection, and response.

DATES: This final rule is effective May 29, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on May 29, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2005–22612 and are available for inspection or copying at 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. You may also find this docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Mr. William Cairns, Office of Navigation Systems, Coast Guard, telephone 202–372–1557, e-mail *William.R.Cairns@uscg.mil*. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Acronyms

AIS Automatic Identification System
ASP Application Service Provider
COTP Captain of the Port
CSP Communications Service Provider
DHS Department of Homeland Security
DOT Department of Transportation
DSC Digital Selective Calling
EEZ Exclusive Economic Zone
GMDSS Global Maritime Distress and Safety System
HF High Frequency
ICC Intelligence Coordination Center
IDC International Data Center
IDE International Data Exchange
IMO International Maritime Organization
ITU International Telecommunication Union
LRIT Long Range Identification and Tracking
MDA Maritime Domain Awareness
MF Medium Frequency
MISLE Marine Information for Safety and Law Enforcement
MODU Mobile Offshore Drilling Unit
MSC Maritime Safety Committee
NEPA National Environmental Policy Act of 1969
NOA Notice of Arrival
NM Nautical Mile
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
NVMC National Vessel Movement Center
OCS Outer Continental Shelf
OMB Office of Management and Budget
SAR Search and Rescue
SOLAS International Convention for the Safety of Life at Sea, 1974, as amended
SOLAS V/19–1 SOLAS Chapter V Regulation 19–1
SSAS Ship Security Alert System
VHF Very High Frequency
VMS Vessel Monitoring System
VTS Vessel Traffic Service

II. Regulatory History

On October 3, 2007, we published a notice of proposed rulemaking (NPRM) entitled Long Range Identification and Tracking of Ships in the **Federal Register** (72 FR 56600). We received seven letters commenting on the proposed rule. No public meeting was requested and none was held.

III. Background and Purpose

This section discusses the United States' involvement in the development of the international long-range identification and tracking (LRIT) scheme, provides a summary of the LRIT amendment to chapter V of the International Convention for the Safety of Life at Sea (SOLAS), regulation 19–1, and describes how LRIT information will be generated and processed.

A. LRIT History—International and Domestic

In our NPRM published October 3, 2007, we described previous international and domestic actions leading to our proposal to implement the Safety of Life at Sea Convention (SOLAS) amendment requiring ships to which SOLAS regulation V/19–1 applies to broadcast long-range identification and tracking information so that it could be received by flag States, port States and coastal States (see 72 FR 56601–56602). Our NPRM was published during the International Maritime Organization (IMO) 83rd session of the Maritime Safety Committee (''Committee''), MSC 83, held from October 1 to 12, 2007.

At this October meeting, the Committee adopted Resolution MSC.254(83), which permits the master of a ship or the Administration (the U.S. Coast Guard for U.S. ships) to reduce LRIT transmissions to once per 24-hour period or to switch off the ship-borne LRIT equipment when the ship is undergoing repairs in port or dry-dock or when a ship is laid up for a long period.

Another efficiency and cost saving that was discussed at MSC 83 was reducing the number of automatic LRIT information transmissions from four (4) per day to two (2) per day. See MSC 83/28, Report of the MSC on its 83rd session, pages 59 and 60 for discussion of this issue. Reducing required transmissions to two per day would reduce the communications cost of

transmissions from ship-to-Data-Center by half. This change would likely bring the cost of LRIT information supplied to data centers more in line with the likely demand of states requesting LRIT information. The decision on this item was deferred until MSC 84, to be held from May 7 to 16, 2008. The Coast Guard believes this proposal deserves serious consideration as a cost saving vehicle that has little, if any, adverse impact on the maritime domain awareness benefits to be derived from LRIT. If the number of transmissions required by SOLAS regulation V/19–1 is changed by IMO action, then in a separate rulemaking the Coast Guard would revise the number of LRIT transmissions required by its LRIT regulations.

Additionally, MSC 83 adopted Resolution MSC.242(83), reflecting its decision that Contracting Governments (flag States, port States and coastal States) could request, receive, and make use of LRIT information for safety and marine environmental protection purposes, in addition to maritime security and search and rescue purposes. For purposes of SOLAS, a Contracting Government is a government that has ratified, accepted, approved, or consented by accession to SOLAS and thus has agreed to be bound by SOLAS. Accordingly, the Coast Guard will use LRIT information for those enhanced purposes in order to carry out its multi-missions of marine safety, security, and stewardship, but does not believe that any addition to the regulatory text is necessary for that purpose.

Finally, MSC 83 decided at least during the initial 2-year operational period of LRIT, from January 1, 2009, to December 31, 2010, there would not be an International Data Center. MSC also decided to accept the contingent offer of the United States to build and operate the International Data Exchange on a temporary, interim basis until a more permanent solution could be decided by MSC. It also maintained the previously decided implementation schedule for LRIT system operation. MSC 83/28, Report of the MSC on its 83rd session, page 47.

We use the terms ''flag State,'' ''port State,'' and ''coastal State'' throughout this document. Flag State refers to the nation whose flag the ship is entitled to fly. Port State refers to a nation at whose internal waters, ports, or roadsteads a ship will call, is calling, or has called. Coastal State refers to a nation off whose coast a ship is transiting without calling at its internal waters, ports, or roadsteads. This explanation of these three terms is provided to assist the reader in understanding the provisions of this proposed rule, and is not intended as a comprehensive definition of those terms. Nor is it to be understood to express a view as to the jurisdictional competence or authority of the nation in its capacities as a flag State, port State, or coastal State.

B. Description of the LRIT System

The LRIT system consists of the shipborne LRIT information transmitting equipment, Communications Service Providers (CSPs), Application Service Providers (ASPs), LRIT Data Centers, including any related Vessel Monitoring System(s) (VMSs), the LRIT Data Distribution Plan and the International LRIT Data Exchange. Certain aspects of the performance of the LRIT system are reviewed or audited by the LRIT Coordinator acting on behalf of the IMO and its Contracting Governments. For a more detailed description of the LRIT system, please refer to our NPRM published October 3, 2007, in the **Federal Register** (72 FR 56600).

C. Discussion of Rule

This rule requires certain ships on an international voyage to transmit position information using LRIT equipment. These requirements will appear in a new subpart to 33 CFR Part 169: Subpart C—Transmission of Long Range Identification and Tracking Information.

As stated in § 169.200, the purpose of the LRIT regulations is to implement SOLAS V/19–1 and to require certain ships engaged on an international voyage to transmit ship identification and position information electronically. The types of ships required to transmit position reports are identified in § 169.205: Passenger ships, including high-speed passenger craft, that carry more than 12 passengers; cargo ships, including high speed craft, of 300 gross tonnage or more; and self-propelled mobile offshore drilling units.

Under § 169.210, a U.S. flag ship covered by § 169.205 must transmit position reports at all times while engaged on an international voyage. The Coast Guard is implementing a SOLAS requirement for ships covered by § 169.205 to transmit position reports depending on their relationship to the United States. The transmissions from a foreign ship covered by § 169.205 may be received by the U.S. once it has announced its intention to enter a U.S. port or place under U.S. notice of arrival requirements in 33 CFR part 160, subpart C. Furthermore, the Coast Guard is entitled to receive position reports from a foreign ship covered by § 169.205 while navigating within 1,000 nautical miles (nm) of the U.S. baseline, unless the ship's Flag Administration, under authority of SOLAS V/19–1.9.1, has directed the ship not to provide these reports. ''Flag Administration'' means the Government of the State whose flag the ship is entitled to fly.

As noted above, many ships subject to this rule will already have the necessary transmission equipment because of existing radio communications requirements under SOLAS Chapter IV and applicability requirements in SOLAS I/3 and IV/1. In addition, our definition of international voyage in § 169.5 will capture U.S. flag ships calling on or operating from a foreign port. These ships would be subject to SOLAS XI–2/6 requirements and are required under 33 CFR 104.297 to have a Ship Security Alert System (SSAS) which, like GMDSS equipment, should allow the ship to meet LRIT requirements without purchasing new equipment.

LRIT implementation dates are based on when a ship is constructed and where it operates. The earliest LRIT implementation date in § 169.220 would be December 31, 2008, for ships constructed on or after that date. Ships constructed before December 31, 2008, would be required to comply with LRIT requirements by the first survey of the ships radio installation after December 31, 2008, if the ship operates—

- Within 100 nm of the United States baseline, or
- Within range of an Inmarsat geostationary satellite, or other Application Service Provider recognized by the Administration, with which continuous alerting is available.

An additional 6 months is provided—until the first survey of radio installation after July 1, 2009—for ships constructed before December 31, 2008, that operate both within and outside the area or range identified immediately above. However, those ships must meet the earlier deadline if they operate within that area or range on or before the first survey of the ships radio installation after July 1, 2009.

We do not use the term ''sea area'' in our rule. IMO uses that term in SOLAS V/19–1.4, regarding these installation dates above, as well as in describing a LRIT exemption. Instead, we have used a ship-within-range approach represented by set distances because the United States has not yet defined sea area A1 or A2, as it is permitted to do under SOLAS IV/1.12 and 1.13 consistent with IMO Resolution A.801(19). For the purposes of implementing SOLAS V/19–1, we consider the following distances as

functional equivalents of our as-yet undefined sea areas: within 20 nm from the U.S. baseline as the functional equivalent for sea area A1; and within 20 to 100 nm from the U.S. baseline as the functional equivalent for sea area A2.

As stated in § 169.215, LRIT equipment must be type-approved and meet the requirements of IMO Resolutions A.694(17), MSC.210(81), and MSC.254(83), and IEC standard IEC 60945. Manufacturers seeking type approval should submit details of their equipment to Commandant, U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001. Under § 169.225, a ship must use an Application Service Provider recognized by its Administration. Under § 169.230, position reports must be transmitted every 6 hours unless a more frequent interval is requested remotely by an LRIT Data Center.

As specified in § 169.240, a ship may switch its LRIT equipment off when permitted by its Flag Administration or in circumstances described in SOLAS V/19–1.7, but under § 169.245, the ship's master must inform the Flag Administration without undue delay if the LRIT equipment is switched off or fails to operate. The reason for switching the equipment off, along with the duration of it being off, must be recorded in the ship's logbook.

An exemption from LRIT requirements is provided in § 169.235 for warships, certain public vessels, ships operating solely on the Great Lakes, and ships equipped with an operating automatic identification system (AIS) if the AIS-equipped ship operates only within 20 nautical miles of the U.S. baseline.

In addition to adding subpart C, we have also revised the general provision in subpart A of 33 CFR part 169 by changing the description of the purpose of the part, adding LRIT-related definitions in § 169.5, and adding an ''Incorporation by Reference'' section where we incorporate the International Convention on Tonnage Measurement of Ships, 1969, and IMO resolutions A.694(17), MSC.202(81), MSC.210(81), and MSC .254(83), and IEC standard IEC 60945, related to SOLAS V/19–1 and LRIT performance standards and functional requirements.

IV. Discussion of Comments and Changes From Proposed Rule

We received seven letters commenting on the proposed rule. No public meeting was requested and none was held.

The following is a summary of the comments received, and the changes made to the regulatory text since our proposed rule was published. We first address comments on ship requirements, then those that relate to the LRIT System, and finally we address comments related to Coast Guard resources and enforcement.

A. Ship Requirements

Two commenters asked how LRIT would interface or overlap with the Automatic Identification System (AIS). The Coast Guard does not envision LRIT and AIS interfacing with each other. Although the position, identification, and time of position information will essentially be the same in both systems, the method of transmission is distinct. AIS is a VHF-based system that is limited to line-of-sight but is able to transmit a broader data content than LRIT. LRIT uses satellite technology that will enable the Coast Guard to identify and track ships in a larger geographic area than shore-based AIS. Because AIS data is open broadcast and is easily obtainable, the Coast Guard may not need LRIT information while a ship is in port; however, the process to stop and re-start LRIT transmissions within the LRIT system is not cost-effective unless the ship will not be transmitting for an extended period of time. As the majority of ships required to transmit position reports are expected to be larger cargo and passenger vessels that typically make short-duration port calls, it may be more cost-effective to continue LRIT transmissions. Unless ships are exempt from LRIT through § 169.235(a), there remains a need for SOLAS ships subject to this rule to report LRIT information.

One commenter noted that the rule should address vessels that have a coastwise or an inland route, such as ferries that cross the international boundary between the U.S. and Canada. The Coast Guard disagrees. As previously mentioned, § 169.235(a) states ships fitted with a functional AIS and operating only within 20 nm of the United States baseline are exempt from LRIT reporting per SOLAS V/19–1. Furthermore, ships operating exclusively on the Great Lakes are exempt from LRIT reporting under § 169.235(c). These two exceptions would cover the majority of ferries that cross the international boundary between the U.S. and Canada.

The same commenter asked if a ''sufficient'' report would be generated when LRIT equipment is switched on, as described in the rulemaking, on a voyage of less than 6 hours. A vessel on an international voyage of less than 6 hours that is covered under § 169.205 must keep its LRIT type-approved equipment switched on during the entire international voyage. If the LRIT equipment has been switched off, when it is switched on it should send a report if the last report it sent is more than 6 hours old. If its LRIT equipment is functioning normally, the vessel would satisfy the LRIT reporting requirements during its voyage. Also, the vessel's LRIT equipment must respond if polled, even during a less-than-6-hour international voyage.

Two commenters perceived this rule required certain operators on coastal and inland voyages, specifically relating to sea areas A1 or A2, who have not yet been mandated to purchase Global Maritime Distress and Safety System (GMDSS) equipment to purchase LRIT equipment. The Coast Guard disagrees. In the examples given, the Coast Guard would expect that most of these ships would be operating within sea area A1 once it is declared and as such, would be exempt from LRIT requirements. SOLAS V/19–1 exempts ships fitted with an AIS and operated exclusively within sea area A1. For the purposes of this regulation, we have interpreted sea area A1 to be functionally equivalent to 20 nm, which is within VHF range of the coast.

As specified in § 169.235(a), ships operating AIS and that operate only within 20 nm of the U.S. baseline are exempt from LRIT. As the U.S. has not yet declared sea areas A1 or A2, that terminology was specifically avoided in this rule. However, ships that will be required under GMDSS rules to purchase GMDSS equipment for sea areas A2 if and when it is declared, operating outside of VHF range of the coast and beyond 20 nm of the U.S. baseline, will need to carry LRIT compliant equipment.

One commenter requested the regulation to address the issue of permission and allowable times for LRIT equipment to be switched off, with specific provisions for Mobile Off-shore Drilling Units (MODUs) that are undergoing repairs in a foreign port or drydocked or in laid-up status. The Coast Guard has modified the final rule to explain when LRIT equipment may be switched off. At its 83rd session, the IMO Maritime Safety Committee (MSC) addressed this issue. The MSC agreed that, for ships undergoing repairs in port or drydock or when laid up, the master of the ship should be allowed to switch off the LRIT equipment. Accordingly, MSC issued Resolution MSC.254(83) to reflect this as a change to the LRIT Performance Standards and Functional Requirements. We revised § 169.240 in the final rule to include this

requirement and incorporated Resolution MSC.254(83) by reference.

One commenter recommended provisions be added to the regulation that clarify how and when a U.S. vessel, in particular a MODU, is to provide notice and/or obtain authorization to switch off its LRIT equipment. In § 169.205(c), the rule clearly states that MODUs are required to transmit LRIT information when ''underway and not engaged in drilling operations.'' Furthermore, § 169.240 of this final rule permits ships to switch off their LRIT equipment in exigent circumstances as authorized under SOLAS V/19–1.7.2. Prior authorization to switch off LRIT equipment on a U.S. flag ship on an international voyage is required in all circumstances not covered by § 169.240. All ships subject to this rule that have been given authority to switch off their LRIT equipment must provide a timely notification to the Coast Guard in accordance with § 169.245.

One commenter suggested the Coast Guard clarify who is responsible for notification of failures of data transmissions due to equipment problems, blocking of satellite signals and changing of satellite ocean regions, and as a result of Communication Service Providers. The Coast Guard disagrees that such clarification is necessary in the final rule. The LRIT system design, specifically the interconnection protocols between ships and its host Data Center, should be able to identify where LRIT transmissions are dropped. The LRIT communications protocols address this issue, and § 169.245 specifically requires a ship master to report if the ship's LRIT equipment fails to operate.

One commenter recommended that the regulations state that vessel owners and operators may share the LRIT position reports with other parties. The Coast Guard disagrees. Access to LRIT information is only through the SOLAS Contracting Government. The SOLAS regulation specifically requires Contracting Governments to recognize and respect the commercial confidentiality and sensitivity of LRIT information. Permitting the sharing of LRIT position reports, as suggested by the commenter, would be contrary to the SOLAS regulation.

Four commenters expressed concern regarding estimated equipment upgrade costs and suggested the cost to purchase and train on new GMDSS equipment could be prohibitive to small passenger vessels. They stated that the 25 cents per position report estimated cost in the NPRM incurred by the Coast Guard does not reflect all costs in implementing LRIT. The Coast Guard disagrees. Except in the limited instances noted below, the LRIT rulemaking is not imposing a new equipment carriage requirement. Because of existing GMDSS equipment requirements, most vessels will be able to utilize existing equipment to meet LRIT requirements. Although the LRIT architecture is based upon GMDSS equipment or equivalent LRIT information transmitting equipment, it does not require full GMDSS capabilities to satisfy LRIT. Ships that are exempt from the GMDSS equipment carriage requirements should also be exempt from the LRIT requirements, based on their limited areas of operation. In what we believe would be the rare event that a ship operator will need to replace older equipment to satisfy LRIT, that equipment is available from at least one top-of-the-line manufacturer for around $3,000. Any ship with older GMDSS equipment that needs replacement will already have trained GMDSS operators on board. These operators would be familiar with GMDSS-based LRIT equipment. Therefore, we did not estimate any additional training costs for this rule. Furthermore, LRIT operations are envisioned to be automatic and should not require intervention by shipboard personnel.

Two commenters stated that problems inherent with the GMDSS system would not increase Maritime Domain Awareness (MDA). The benefit of having LRIT along with Vessel Traffic Service (VTS), AIS and other programs that identify and track ships is that it offers layers of information that can serve to confirm or identify anomalies, thus improving MDA. Concerns related to GMDSS, in general, are beyond the scope of this rulemaking.

Two commenters also noted that GMDSS reporting is a time consuming part of watches and diverts attention from more important tasks. The Coast Guard disagrees. LRIT is not expected to have any impact on shipboard personnel in terms of crew workload. LRIT information is sent automatically and involves no routine human intervention.

Two commenters recommend an LRIT exemption for VTS monitored voyages, as well as AIS equipped vessels that should remain in effect after the U.S. establishes sea areas A1 and A2. The Coast Guard agrees to some extent, and notes that an exemption is already in place. Ships covered by § 169.205 that operate solely in VTS areas are generally within 20 nm of the U.S. baseline and therefore, if fitted with AIS, would be exempt from LRIT under § 169.235(a). However, AIS-equipped ships covered by § 169.205 that operate beyond 20 nm of the U.S. baseline fall outside of the § 169.235(a) exception, and are therefore required to transmit LRIT position reports while under VTS monitoring.

One commenter expressed concern that the LRIT NPRM background section suggests submittals via the Coast Guard's National Vessel Movement Center's (NVMC) existing Notice of Arrival (NOA) System in the absence of an International Data Center (IDC), and also noted NOA requires manual submission while LRIT will be automatic submissions. The Coast Guard does not view the IDC as a critical element in the LRIT system. In the absence of an IDC, ships may be associated with another National, Regional, or Cooperative Data Center.

The conditional change referenced in the preamble of the NPRM was based on IMO implementation dates being pushed further into the future. That has not occurred. Ships must transmit position reports as required by this rule. If a ship covered by this rule has submitted a notice of arrival and the United States is not receiving its LRIT data at required intervals, the ship will likely be notified by a Captain of the Port (COTP) that there may be a delay in its regulated access to the port because required position reports are not being received.

One commenter was concerned about the use of NOA for position reports. The Coast Guard acknowledges this concern, and as previously noted, SOLAS implementation dates have not been pushed further into the future. Therefore, this final rule is not requiring the use of NOA as a replacement for LRIT-transmitted position reports. The absence of an additional requirement in this rule, however, does not prevent a COTP, under authority reflected in 33 CFR 160.111, from ordering necessary information from a specific ship covered by this rule and headed for a U.S. port or place if the United States is not receiving LRIT data from that ship.

B. LRIT System

One commenter requested the regulation specifically state that satellite position reports will be paid by the Coast Guard. The Coast Guard does not believe this is necessary, given the rule's incorporation by reference of IMO Resolution MSC.202(81), which contains the provision that Contracting Governments will not impose any charges on ships in relation to the LRIT tracking information they may seek to receive. SOLAS V/19–1.11.1.

One commenter asked how the LRIT system would work without an IDC. MSC 83 decided not to establish an IDC. The Coast Guard has determined that in

the absence of an IDC, all SOLAS Contracting Governments will need to associate their ships with a National, Regional, or Cooperative Data Center.

One commenter suggested the Coast Guard address how it will handle the issue of flag States that do not have an operational data center and have decided not to make use of the U.S. system. The Coast Guard recognizes that the international LRIT system is dependent on each SOLAS Contracting Government establishing an LRIT data center and ensuring that position reports from its ships entitled to fly its Flag may be accessed by other Data Centers through the International LRIT Data Exchange. This rule, however, is directed at ships, not at other governments. As noted above, if the United States does not receive LRIT data from a ship covered by this rule that is headed to a U.S. port or place, then a COTP could exercise full regulatory authority over individual ships in order to protect the safety and security of his or her port.

One commenter expressed concern about how the IDE and LRIT system would function after January 1, 2010. The agreement reached at MSC 83 was for the U.S. to operate the IDE on a temporary interim basis until January 2010. In the interim, MSC must decide on an alternative arrangement, i.e., another Administration or commercial entity to build, host, operate, and maintain the IDE. If MSC is unable to decide on such an alternative, the U.S. will need to determine if it can continue its temporary operation of the IDE.

One commenter requested that § 169.210 specify transmission of reports shall continue until such time as the vessel departs the U.S. Exclusive Economic Zone (EEZ) or Outer Continental Shelf (OCS) on an outbound international voyage. The Coast Guard disagrees. The SOLAS regulation is silent on the issue of a ship departing a port, and the commenter also noted the rule specifies when a vessel must begin transmitting but does not indicate when the transmissions may cease. However, the SOLAS regulation and performance standards and functional requirements incorporated by reference contemplate LRIT transmissions every six (6) hours and when polled. This requirement is not dependent on whether the ship is entering or departing port. Once a ship has left port, a Contracting Government is entitled to track the ship within 1,000 nm of its coast, unless specifically denied by the ship's Flag Administration, or until that ship has entered the internal waters of another Contracting Government.

The same commenter requested the Coast Guard add the definitions of EEZ and OCS to § 169.5. The Coast Guard disagrees. Neither the term EEZ nor OCS is contained in that SOLAS regulation, nor do they have any bearing on that regulation or this rulemaking. This rule implements SOLAS V/19–1.8.1.3, which entitles a Contracting Government to receive position reports from foreign vessels operating within 1,000 nm of its coast, irrespective of its location relative to the EEZ or OCS. Therefore, we see no need to define those terms in this rule.

One commenter stated that § 169.210 should clarify the rule to include vessels that intend to work on the U.S. OCS but not enter the territorial sea, vessels that intend to lighter cargoes offshore, or other ''hovering vessels''. The Coast Guard disagrees that such clarification is necessary in the rule. The Coast Guard believes these ships are considered to be on an international voyage. As stated in § 169.205 and reflected in the heading of § 169.210, this final rule applies to ships engaged on an international voyage. If these OCS locations are within 1,000 nm of the U.S. baseline, then § 169.210(c) makes it clear that the Coast Guard is entitled to receive position reports based on the ship's location relative to U.S. coast (i.e., coastal State relationship). Further, § 169.210(b) makes it clear that United States has a port State relationship to a ship that has submitted a NOA under 33 CFR part 160, subpart C, and therefore the Coast Guard has authority to require position reports. This rule does not change those NOA requirements in part 160 that are based on a ship going to a U.S. ''port or place of destination.'' Under either relationship, foreign flag ships engaged on an international voyage, such as those identified by the commenter, would be required to transmit position reports, as would a U.S. flag ship on an international voyage.

One commenter requested that the regulation address the ''non-mandatory'' requirement imposed by the Commander, Eighth Coast Guard District, which mandates installation of ''locating devices'' on all MODUs, both self propelled and non-self propelled, while operating in the U.S. Gulf of Mexico, and suggested LRIT replace that requirement. The Coast Guard disagrees. The LRIT system and these regulations, and the Eighth District voluntary system to which this comment refers, are designed to serve two distinct and different capabilities. Furthermore, these regulations pertain only to self-propelled MODUs and the Eight District voluntary program pertains to all MODUs. Therefore, the need for the Eighth District voluntary program will not be eliminated by the LRIT system or the LRIT information that results.

The Eighth Coast Guard District voluntary requirement relates to ships and facilities subject to 33 CFR chapter I subchapter N (Outer Continental Shelf Activities). The reporting requirements facilitate the Coast Guard's ability to obtain limited access to MODU position information once a storm has passed through the MODU area of operation. The position reporting requirement provides an essential part of the Eighth District's ability to prepare for, and respond to, hurricanes and other natural disasters. The position reporting requirement is intended to maximize severe weather response preparation and Maritime Domain Awareness of our OCS in order to ensure a successful response effort. This initiative utilizes transponder equipment and is considered an industry ''best practice.'' The technology and equipment provides real time MODU location tracking capability. It is vital to the Coast Guard's and the drilling industry's shared success to limit environmental and property damage caused by MODU loss of station-keeping ability (dragging anchors across and damaging undersea pipelines on the seabed as a result of the hurricane being a prime example).

In addition, real time access to this position information is vitally important to mutual initial response efforts (e.g., having the last known position of a MODU if it sank). The Eighth District initiative allows access to such information from all types of MODU's and offshore facilities, whereas, the LRIT regulations are limited to self-propelled MODU's. Furthermore, § 169.205(c) only requires position reports from MODU's that are actually underway on an international voyage. Because of the foregoing dissimilarities between the Eighth District voluntary program and the LRIT regulation, the Coast Guard does not agree that LRIT can be an effective substitute for the Eighth District voluntary program.

One commenter stated that the LRIT exemption for vessels operating within 20 nm of land with properly operating AIS is somewhat confusing and suggested it may be clearer to state for vessels that may otherwise be required to operate an LRIT system, the operation of such a system is not required for vessels when operating within 20 nm of the baseline or within the internal waters of the U.S. The Coast Guard disagrees. The AIS exemption under § 169.235(a) applies only to ships certified for operation within 20 nm of the coast, and is derived from the SOLAS regulation that exempts ships

operating solely in sea area A1. Therefore, the AIS exemption does not apply when a ship enters from seaward the area within 20 nm of the coast, or otherwise operates beyond 20 nm from the coast.

One commenter recommended the Coast Guard recognize the added MDA value already provided by the Automated Secure Vessel Tracking System to vessels that voluntarily provide more frequent polling by allowing partial relief from the Notice of Arrival updating requirements. The Coast Guard disagrees. Specifically identifying a system operated by a commercial entity outside of the LRIT paradigm is inappropriate when it does not meet the LRIT performance standards and functional requirements. Additionally, data exchanges with the NOA system are outside the scope of this rulemaking. We are not changing NOA requirements in this rulemaking since LRIT does not satisfy NOA update report requirements.

C. Coast Guard Resources and Enforcement

One commenter noted the regulation made no reference to penalties imposed upon vessels that are required to transmit LRIT data but fail to do so, and also asked if the Coast Guard planned to intercept such vessels. This regulation is issued under the authority of 46 U.S.C. 70115 and 33 U.S.C. 1231; these statutes provide for civil and criminal penalties for violation of the statute or regulations promulgated under them by persons subject to the statute and regulation. See 46 U.S.C. 70119 (civil penalty of $25,000 per day of violation) and 70120 (in rem liability of the vessel for the civil penalty and certain costs), and 33 U.S.C. 1232 (civil penalty of $25,000 per day, indexed for inflation and currently $32,500 per day, liable in rem against the ship; knowing and willful violations constitute a class D felony; and denial of entry).

To ensure effective compliance, the Coast Guard will develop and implement a compliance strategy that includes enforcement in appropriate cases. As with all new requirements, this compliance strategy will include elements of education of the regulated public supplemented by use of our civil penalty authority and, in the event of a knowing and willful violation, we will consider referring the matter to the Department of Justice for criminal prosecution.

The most important goal of this regulation is to obtain compliance so that the Coast Guard achieves maritime domain awareness and is able to detect anomalies and take measures to satisfy its mission to protect the safety and security of our ports and waterways. For example, if a ship that is arriving at a U.S. port has submitted an advance notice of arrival but its LRIT information has not been received, the COTP will be notified. Taking this and other information into account, the COTP may exercise various enforcement options including, when and if necessary, holding the ship offshore in U.S. territorial seas until it can be boarded and checked for security concerns.

One commenter expressed concern about the impact of a large number of LRIT transmissions on the Coast Guard's staffing capacity and asked if the cost-benefit analysis included increased recruitment and staffing needs. The Coast Guard does not anticipate a need for an increase in Coast Guard staffing as a result of this rulemaking. The LRIT information collection and dissemination within the Coast Guard will be automated as much as possible. There are already USCG systems in place for displaying this type of information and we are planning to incorporate the LRIT information into those systems.

One commenter asked several questions concerning ship-by-ship inspections of LRIT equipment. The first question asked whether inspections would require more specialized training of inspectors and whether additional inspectors would be required. The Coast Guard does not envision the need for more specialization in order to conduct inspections of ships carrying LRIT equipment. In many cases, this equipment will be the same as currently installed on SOLAS ships to satisfy GMDSS requirements, which will implement some degree of remote testing capability. We do not anticipate a need to increase the number of inspectors.

The commenter's next question asked what the inspection would entail. The Coast Guard expects the inspection of LRIT equipment to follow a similar inspection as currently required for GMDSS equipment.

The commenter's final question pertained to the length of time afforded to operators to fix problems with LRIT equipment. Coast Guard inspectors will work with vessel operators to determine a reasonable length of time needed to correct discrepancies. In making this determination, Coast Guard inspectors typically consider the details of the deficiency found, the ability and/or availability of personnel to affect corrective action, along with the availability of parts. As the LRIT system comes online and as new ships are entered into the system, the Coast Guard envisions utilizing a contract with a third party to verify the capability of shipboard LRIT equipment and its ability to meet LRIT performance standards.

D. Summary of Changes From Proposed Rule

This is a summary of changes from the proposed rule. We revised §§ 169.15, 169.215 and 169.240 to reflect the incorporation by reference of IMO Resolution MSC.254(83) regarding the master of a ship being allowed to switch off the ship's LRIT equipment when the ship is undergoing repairs in port or drydock or when the ship is laid up.

In § 169.5, our definition of ''gross tonnage'' remains the same as proposed in the NPRM, with the exception that at the end we note that we have incorporated the International Convention on Tonnage Measurement of Ships, 1969, by reference. We also referenced this tonnage convention in § 169.15, which lists materials incorporated by reference.

Finally, we revised the informational note in § 169.245 to identify the U.S. Coast Guard—and not a unit of the Coast Guard—as the Flag Administration whom U.S. ship masters notify when LRIT equipment is switched off, fails to operate, or regarding any other LRIT-related matters. All LRIT notifications for the U.S. Flag Administration, in addition to requests or questions about LRIT, should be communicated to the U.S. Coast Guard by e-mail addressed to *LRIT@uscg.mil*. If an additional means of communicating with the Coast Guard is established (e.g., phone number), we will revise the informational note in § 169.245 to reflect this change.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 169.5, 169.215 and 169.240 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 169.15.

VI. Regulatory Evaluation

We developed this 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.

A. Executive Order 12866

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.

A final Regulatory Evaluation follows:

The Maritime Transportation Security Act, authorized the Coast Guard under the Department of Homeland Security Delegation No. 0170.1, to implement the use of LRIT for U.S. and foreign flag ships off the U.S. coastlines that are equipped with GMDSS, i.e., INMARSAT–C, or equivalent satellite technology. The carriage requirement for this equipment for foreign flag vessels is contained in the SOLAS Convention, 1974, as amended, and in 47 CFR part 80 for U.S. flag vessels. When implemented, LRIT, as an amendment to SOLAS, will enhance overall maritime domain awareness by providing the United States, as a Contracting Government to SOLAS, with the identities and current location information of vessels that are within 1,000 nm of the U.S. baseline, which includes vessels that may be in innocent passage or on the high seas. As an ancillary benefit, LRIT may also assist the Coast Guard in the area of search and rescue by reducing the response time to the location of vessels in distress.

This rule will affect U.S. and foreign flag SOLAS vessels that transit internationally. LRIT will affect vessels engaged on international voyages and would include passenger vessels carrying more than 12 passengers including high-speed craft, cargo ships 300 gross tonnage or more including high-speed craft, and self-propelled mobile offshore drilling units.

The equipment necessary to transmit LRIT data is not a new carriage requirement under this rule. With few exceptions, ships required to transmit LRIT information will not need to purchase new LRIT equipment. The affected U.S. flag vessel population is already required to carry the requisite GMDSS equipment onboard, as defined in 47 CFR part 80. This equipment should be operable and capable of transmitting a vessel's position automatically that meets the performance standards in IMO Resolutions MSC.210(81) and MSC.254(83) and that can transmit LRIT data as detailed in the ''Description of the LRIT System,'' Section III.B, above.

The Coast Guard also envisioned LRIT to be backward compatible with existing equipment onboard vessels and we do not have any data to suggest otherwise. We estimate that approximately 15 percent of U.S. flag vessels (about 70 out of the estimated 450) may need some type of equipment enhancement. Of that 15 percent, we estimate that two-thirds (about 47 of the 450 vessels) may need software or firmware upgrades in order to satisfy the LRIT requirement. There may be little to no cost for this activity as at least one manufacturer offers the software upgrades for free. Furthermore, we estimate that the remaining one-third (about 23 out of the 450 vessels) may need equipment upgrades (such as new GMDSS satellite communications equipment for example) in order to satisfy the LRIT requirement and may incur minimal costs as a result of this rule. We estimate the cost for a new GMDSS or equivalent satellite unit for LRIT to be around $3,000. If new units were needed on only 23 U.S. flag vessels, then the equipment cost incurred by industry would be less than $70,000 to fulfill the LRIT requirement.

The Coast Guard anticipates that crews will not have to engage in activities outside of their normal duties in order to comply with the LRIT requirement. The only requirement for each vessel is to have the GMDSS activated and transmitting LRIT information when the vessel is underway so its position can be reported automatically.

Contracting Governments that are entitled to request and receive the LRIT information will be required to pay for this service. The United States, as a Contracting Government, will incur the cost for vessels that transit within 1,000 nautical miles of the U.S. coastline that transmit their position signals to a data center that collects the information.

Based on information from the Coast Guard's Intelligence Coordination Center (ICC) and Marine Information for Safety and Law Enforcement (MISLE) data, we estimate that 3,000 vessels transit within 1,000 nautical miles of the U.S. coastlines on any given day and would be affected by this rule. To obtain the U.S. flag population of vessels, we utilized the Coast Guard's MISLE database and searched vessels that are SOLAS-certificated and that have an ''ocean'' route designation. Of the approximately 3,000 vessels that ICC estimated, approximately 450 are U.S. flag vessels and the remaining balance is foreign flag vessels that transit internationally.

The LRIT equipment will require a one-time activation and will remain on unless switched off as permitted by the vessel's Flag Administration, in circumstances detailed in SOLAS V/19–1.7, or in paragraph 4.4.1, of resolution MSC.210(81), as amended by resolution MSC.254(83). Once the crew activates the onboard equipment, information will be transmitted automatically from the vessel to an LRIT Data Center. More information on the LRIT System can be found in the ''Description of the LRIT System,'' Section III.C, of the NPRM.

Based on the SOLAS LRIT amendments, one transmission will be made every six hours, or four times a day, 365 days a year. A covered U.S. flag ship on international voyages is required to make transmissions in accordance with this schedule, including during routine port calls, until the international voyage terminates at a U.S. port. Likewise, a covered foreign flag ship that calls on a U.S. port must make transmissions in accordance with this schedule, also while in U.S. port, and the Coast Guard is entitled to continue to receive position reports until the ship has proceeded beyond 1,000 nm of the U.S. baseline or enters the territorial seas of another Contracting Government. Based on the foregoing, we estimate that foreign flag vessels would make approximately 10,200 transmissions per day (2,550 vessels × 4 transmissions per day) for a total of 3,723,000 transmissions per year (2,550 vessels × 4 transmissions per day × 365 days per year). We estimate that U.S. flag vessels would make approximately 1,800 transmissions per day (450 vessels × 4 transmissions per day) for a total of 657,000 transmissions per year (450 vessels × 4 transmissions per day × 365 days per year). The Coast Guard's Office of Navigation Systems estimates that each transmission would cost the U.S. Government $0.25, or even less if transmissions are purchased in bulk.

We estimate that the U.S. Government will incur data transmission costs of approximately $930,750 (3,723,000 transmissions × $0.25 per transmission) annually from foreign flag vessels and $164,250 (657,000 transmissions × $0.25 per transmission) annually from U.S. vessels for a total annual cost of $1,095,000.

B. 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.

We have reviewed this rule for potential economic impacts on small entities. Since the U.S. Government will incur costs associated with the transmission of information from a

vessel to the United States and we estimate that any equipment upgrade cost that may be incurred by a ship would be no more than $3,000 and that less than 23 ships would require such upgrades, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. 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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If you think that this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning these provisions or options for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule. Note, 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.

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).

D. Collection of Information

This rule will call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow.

Title: Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–new.

Summary of the Collection of Information: Certain vessels will periodically report identity and position data electronically.

Need for Information: LRIT will enhance security by providing the United States with the identities and current location of vessels off its coast. The United States will then have sufficient time to evaluate the security risk posed by a vessel and then respond, if necessary, to reduce the risk of a possible security threat. In addition, there will also be an immediate safety benefit by enhancing the information available to SAR services. Accurate information on the location of a vessel in distress as well as vessels in the area that could lend assistance will save valuable response time to affect a timely rescue.

Proposed Use of Information: Provide the United States with identity and current location data for a vessel off its coast and assess whether there is a security risk or to assist rescue coordination centers response to a vessel in distress.

Description of the Respondents: Owners/operators of U.S. flag ships that trade internationally.

Number of Respondents: Approximately 450 vessels.

Frequency of Response: A one-time GMDSS LRIT system initialization for each vessel, subsequent annual system check, and occasional logbook entries when a ship master switches off the LRIT equipment or the LRIT equipment fails to operate.

Burden of Response: 20 minutes per vessel.

Estimate of Total Annual Burden: 150 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, §§ 169.215, 169.230 and 169.245 in this rule may not be enforced until this collection is approved by OMB. We will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

E. 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.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135, March 6, 2000.

The requirements in this rule that certain ships on international voyages have and operate LRIT equipment that meets international performance standards fall into the categories of equipping ships and operating that equipment. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 uses the following technical standards:

- IEC 60945, Fourth edition 2002–08, Maritime navigation and radiocommunication equipment and systems—General requirements—Methods of testing and required test results.
- IMO Resolution MSC.202(81), adopted on May 19, 2006, Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended.
- IMO Resolution MSC.210(81), adopted May 19, 2006, Performance Standards and Functional Requirements for the Long-Range Identification and Tracking of Ships.
- IMO Resolution MSC.254(83), adopted October 12, 2007, Adoption of Amendments to the Performance Standards and Functional Requirements for the Long-Range Identification and Tracking of Ships.
- IMO Resolution A.694(17), adopted November 6, 1991, General Requirements for Shipborne Radio Equipment Forming Part of the Global Maritime Distress and Safety System (GMDSS) and for Electronic Navigational Aids.
- International Convention on Tonnage Measurement of Ships, 1969.

The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 169.15.

M. 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)(d), of the Instruction. This rule concerns vessel equipment requirements that will contribute to a higher level of marine safety and maritime domain awareness for U.S. port and waterways. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 169

Endangered and threatened species, Incorporation by reference, Marine mammals, Marine safety, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 169 as follows:

PART 169—SHIP REPORTING SYSTEMS

■ 1. The authority citation is revised to read:

Authority: 33 U.S.C. 1230(d), 1231; 46 U.S.C. 70115, Department of Homeland Security Delegation No. 0170.1.

§ 169.1 [Amended]

■ 2. Amend § 169.1 as follows:

■ a. In the section heading, remove the word ''subpart'' and add, in its place, the word ''part''; and

■ b. In the last sentence, add the words ''maritime security and domain awareness,'' immediately after ''navigation safety,''.

■ 3. In § 169.5, revise the section heading; add introductory text and add, in alphabetical order, the definitions of the terms ''Administration'', ''Cargo ship'', ''Flag Administration'', ''Gross tonnage'', ''High speed craft'', ''High speed passenger craft'', ''International voyage'', ''Long range identification and tracking (LRIT) information or position report'', ''LRIT Data Center'', ''Mobile offshore drilling unit'', ''Passenger ship'', and ''United States'' to read as follows:

§ 169.5 How are terms used in this part defined?

As used in this part—

Administration means the Government of the State whose flag the ship is entitled to fly.

Cargo ship means any ship which is not a passenger ship.

Flag Administration means the Government of a State whose flag the ship is entitled to fly.

Gross tonnage means tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969 (Incorporated by reference, see § 169.15).

* * * * *

High speed craft means a craft that is operable on or above the water and is capable of a maximum speed equal to or exceeding $V=3.7\times displ^{.1667}$, where ''V'' is the maximum speed and ''displ'' is the vessel displacement corresponding to the design waterline in cubic meters.

High speed passenger craft means a high speed craft carrying more than 12 passengers.

International voyage means a voyage from a country to which the present International Convention for the Safety of Life at Sea (SOLAS), 1974 applies to a port outside such country, or conversely. For U.S. ships, such voyages will be considered to originate at a port in the United States, regardless of when the voyage actually began. Such voyages for U.S. ships will continue until the ship returns to the United States from its last foreign port.

Long range identification and tracking (LRIT) information or *position report* means a report containing the following information:

(1) The identity of the ship;

(2) The position of the ship (latitude and longitude); and

(3) The date and time of the position provided.

LRIT Data Center means a center established by a SOLAS Contracting Government or a group of Contracting

Governments, or in the case of the International Data Center, by IMO, to request, receive, process, and archive LRIT information. An LRIT Data Center may be National, Regional, Co-operative or International.

* * * * *

Mobile offshore drilling unit means a self-propelled vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

Passenger ship means a ship that carries more than 12 passengers.

* * * * *

United States means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

■ 4. In subpart A, add § 169.15 to read as follows:

§ 169.15 Incorporation by reference: Where can I get a copy of the publications mentioned in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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*. Also, it is available for inspection at the Coast Guard, Office of Navigation Systems (CG–54132), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Electrotechnical Commission (IEC) Bureau Central de la Commission Electrotechnique Internationale*, 3 rue de Varembé, P.O. Box 131, 1211 Geneva 20, Switzerland.

(1) IEC 60945, Fourth edition 2002–08, Maritime navigation and radiocommunication equipment and systems—General requirements—Methods of testing and required test results, incorporation by reference approved for § 169.215.

(2) [Reserved]

(c) *International Maritime Organization (IMO)*, 4 Albert Embankment, London SE1 7SR, U.K.

(1) IMO Resolution MSC.202(81), adopted on May 19, 2006, Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended, incorporation by reference approved for § 169.240.

(2) IMO Resolution MSC.210(81), adopted on May 19, 2006, Performance Standards and Functional Requirements for the Long-Range Identification and Tracking of Ships, incorporation by reference approved for §§ 169.215 and 169.240.

(3) IMO Resolution MSC.254(83), adopted on October 12, 2007, Adoption of Amendments to the Performance Standards and Functional Requirements for the Long-Range Identification and Tracking of Ships, incorporation by reference approved for §§ 169.215 and 169.240.

(4) IMO Resolution A.694(17), adopted on November 6, 1991, General Requirements for Shipborne Radio Equipment Forming Part of the Global Maritime Distress and Safety System (GMDSS) and for Electronic Navigational Aids, incorporation by reference approved for § 165.215.

(5) International Convention on Tonnage Measurement of Ships, 1969, incorporation by reference approved for § 169.5.

■ 5. Add subpart C, consisting of §§ 169.200 through 169.245, to read as follows:

Subpart C—Transmission of Long Range Identification and Tracking Information

Sec.

169.200 What is the purpose of this subpart?
169.205 What types of ships are required to transmit LRIT information (position reports)?
169.210 Where during its international voyage must a ship transmit position reports?
169.215 How must a ship transmit position reports?
169.220 When must a ship be fitted with LRIT equipment?
169.225 Which Application Service Providers may a ship use?
169.230 How often must a ship transmit position reports?
169.235 What exemptions are there from reporting?
169.240 When may LRIT equipment be switched off?
169.245 What must a ship master do if LRIT equipment is switched off or fails to operate?

Subpart C—Transmission of Long Range Identification and Tracking Information

§ 169.200 What is the purpose of this subpart?

This subpart implements Regulation 19–1 of SOLAS Chapter V (SOLAS V/19–1) and requires certain ships engaged on an international voyage to transmit vessel identification and position information electronically. This requirement enables the Coast Guard to obtain long range identification and tracking (LRIT) information and thus heightens our overall maritime domain awareness, enhances our search and rescue operations, and increases our ability to detect anomalies and deter transportation security incidents.

§ 169.205 What types of ships are required to transmit LRIT information (position reports)?

The following ships, while engaged on an international voyage, are required to transmit position reports:

(a) A passenger ship, including high speed passenger craft.

(b) A cargo ship, including high speed craft, of 300 gross tonnage or more.

(c) A mobile offshore drilling unit while underway and not engaged in drilling operations.

§ 169.210 Where during its international voyage must a ship transmit position reports?

The requirements for the transmission of position reports, imposed by the United States, vary depending on the relationship of the United States to a ship identified in § 169.205.

(a) *Flag State relationship.* A U.S. flag ship engaged on an international voyage must transmit position reports wherever they are located.

(b) *Port State relationship.* A foreign flag ship engaged on an international voyage must transmit position reports after the ship has announced its intention to enter a U.S. port or place under requirements in 33 CFR part 160, subpart C.

(c) *Coastal State relationship.* A foreign flag ship engaged on an international voyage must transmit position reports when the ship is within 1,000 nautical miles of the baseline of the United States, unless their Flag Administration, under authority of SOLAS V/19–1.9.1, has directed them not to do so.

§ 169.215 How must a ship transmit position reports?

A ship must transmit position reports using Long Range Identification and Tracking (LRIT) equipment that has been type-approved by their Administration. To be type-approved by the Coast Guard, LRIT equipment must meet the requirements of IMO Resolutions A.694(17), MSC.210(81), and MSC.254(83), and IEC standard IEC 60945 (Incorporated by reference, see § 169.15).

§ 169.220 When must a ship be fitted with LRIT equipment?

A ship identified in § 169.205 must be equipped with LRIT equipment—

(a) Before getting underway, if the ship is constructed on or after December 31, 2008.

(b) By the first survey of the radio installation after December 31, 2008, if the ship is—

(1) Constructed before December 31, 2008, and

(2) Operates within—

(i) One hundred (100) nautical miles of the United States baseline, or

(ii) Range of an Inmarsat geostationary satellite, or other Application Service Provider recognized by the Administration, with which continuous alerting is available.

(c) By the first survey of the radio installation after July 1, 2009, if the ship is—

(1) Constructed before December 31, 2008, and

(2) Operates within the area or range specified in paragraph (b)(2) of this section as well as outside the range of an Inmarsat geostationary satellite with which continuous alerting is available. While operating in the area or range specified in paragraph (b)(2) of this section, however, a ship must install LRIT equipment by the first survey of the radio installation after December 31, 2008.

§ 169.225 Which Application Service Providers may a ship use?

A ship may use an Application Service Provider (ASP) recognized by its Administration. Some Communication Service Providers may also serve as an ASP.

§ 169.230 How often must a ship transmit position reports?

A ship's LRIT equipment must transmit position reports at 6-hour intervals unless a more frequent interval is requested remotely by an LRIT Data Center.

§ 169.235 What exemptions are there from reporting?

A ship is exempt from this subpart if it is—

(a) Fitted with an operating automatic identification system (AIS), under 33 CFR 164.46, and operates only within 20 nautical miles of the United States baseline,

(b) A warship, naval auxiliaries or other ship owned or operated by a SOLAS Contracting Government and used only on Government non-commercial service, or

(c) A ship solely navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada.

§ 169.240 When may LRIT equipment be switched off?

A ship engaged on an international voyage may switch off its LRIT equipment only when it is permitted by its Flag Administration, in circumstances detailed in SOLAS V/19–1.7, or in paragraph 4.4.1, of resolution MSC.210(81), as amended by resolution MSC.254(83) (Incorporated by reference, see § 169.15).

§ 169.245 What must a ship master do if LRIT equipment is switched off or fails to operate?

(a) If a ship's LRIT equipment is switched off or fails to operate, the ship's master must inform his or her Flag Administration without undue delay.

(b) The master must also make an entry in the ship's logbook that states—

(1) His or her reason for switching the LRIT equipment off, or an entry that the equipment has failed to operate, and

(2) The period during which the LRIT equipment was switched off or non-operational.

Note to § 169.245: For U.S. vessels, the U.S. Coast Guard serves as the Flag Administration for purposes of this section. All LRIT notifications for the U.S. Flag Administration, in addition to requests or questions about LRIT, should be communicated to the U.S. Coast Guard by e-mail addressed to *LRIT@uscg.mil*.

Dated: April 22, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

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REMINDERS

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RULES GOING INTO EFFECT APRIL 29, 2008

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Release of Records:

Tobacco Transition Payment Program; published 4-29-08

ENERGY DEPARTMENT

Defense Priorities and Allocations System; published 2-29-08

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

New Animal Drugs:

Change of Sponsor's Name; published 4-29-08

LABOR DEPARTMENT

Mine Safety and Health Administration

Asbestos Exposure Limit; published 2-29-08

STATE DEPARTMENT

Visas:

Documentation of Nonimmigrants under the Immigration and Nationality Act; published 4-29-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Lycoming Engines IO, et al.; published 4-14-08

TREASURY DEPARTMENT

Internal Revenue Service

Special Rules to Reduce Section 1446 Withholding; published 4-29-08

Standards for Recognition of Tax-Exempt Status if Private Benefit Exists, etc.; Correction; published 4-29-08

COMMENTS DUE NEXT WEEK

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and Threatened Species:

Critical Habitat for Threatened Elkhorn and Staghorn Corals; comments due by 5-6-08; published 2-6-08 [FR 08-00497]

Endangered and Threatened Wildlife and Designating Critical Habitat Listing:

90-day Finding for a Petition to Reclassify Loggerhead Turtles in Western North Atlantic Ocean; comments due by 5-5-08; published 3-5-08 [FR E8-04231]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Atlantic Coast Red Drum Fishery off the Atlantic States; Transfer of Management Authority; comments due by 5-5-08; published 4-3-08 [FR E8-06955]

Fisheries of the Economic Exclusive Zone Off Alaska:

Pacific Cod in the Bering Sea and Aleutian Islands; comments due by 5-8-08; published 4-24-08 [FR E8-09006]

International Fisheries; Atlantic Highly Migratory Species; comments due by 5-5-08; published 4-4-08 [FR E8-07068]

National Marine Sanctuaries Regulations; comments due by 5-9-08; published 3-27-08 [FR E8-06189]

DEFENSE DEPARTMENT

Federal Acquisition Regulation:

Socioeconomic Program Parity; comments due by 5-9-08; published 3-10-08 [FR E8-04561]

EDUCATION DEPARTMENT

Family Educational Rights and Privacy; comments due by 5-8-08; published 3-24-08 [FR E8-05790]

ENVIRONMENTAL PROTECTION AGENCY

Pesticide Tolerance:

Acetic acid; comments due by 5-5-08; published 3-5-08 [FR E8-04023]

Pesticide Tolerances and Time-Limited Pesticide Tolerances:

Methoxyfenozide; comments due by 5-5-08; published 3-5-08 [FR E8-04027]

Approval and Promulgation of Implementation Plans Florida:

Prevention of Significant Deterioration; comments due by 5-5-08; published 4-4-08 [FR E8-07073]

Approval and Promulgation of Implementation Plans:

North Carolina; 1-Hour Ozone Maintenance Plan for Raleigh/Durham, Greensboro/Winston-Salem/High Point Areas; Revisions; comments due by 5-8-08; published 4-8-08 [FR E8-07186]

Authorization of State Hazardous Waste Management Program Revisions:

Virginia; comments due by 5-5-08; published 4-3-08 [FR E8-06675]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; NV; comments due by 5-5-08; published 4-3-08 [FR E8-06919]

Delegation of National Emission Standards for Hazardous Air Pollutants, NV; comments due by 5-5-08; published 4-3-08 [FR E8-06920]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Final Authorization of State Hazardous Waste Management Program Revision; Virginia; comments due by 5-5-08; published 4-3-08 [FR E8-06724]

National Emission Standards for Hazardous Air Pollutants:

Area Source Standards for Nine Metal Fabrication and Finishing Source Categories; comments due by 5-5-08; published 4-3-08 [FR E8-06411]

Pesticide Tolerance:

Bifenazate; comments due by 5-5-08; published 3-5-08 [FR E8-04142]

Flumioxazin; comments due by 5-5-08; published 3-5-08 [FR E8-04102]

FEDERAL TRADE COMMISSION

Textile Fiber Products Identification Act; Rules and Regulations; comments due by 5-5-08; published 4-7-08 [FR E8-07179]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation:

Socioeconomic Program Parity; comments due by 5-9-08; published 3-10-08 [FR E8-04561]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

State Systems Advance Planning Document Process; comments due by 5-6-08; published 3-7-08 [FR E8-04009]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Devices:

General Hospital and Personal Use Devices; Reclassification of Medical Device Data System; comments due by 5-8-08; published 2-8-08 [FR E8-02325]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports); comments due by 5-5-08; published 2-5-08 [FR E8-01516]

Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports); Correction; comments due by 5-5-08; published 2-13-08 [FR E8-02685]

Regattas and Marine Parades:

Great Lake annual marine events; comments due by 5-6-08; published 2-6-08 [FR E8-02165]

Safety Zones:

Annual Events requiring safety zones in the Captain of the Port Buffalo Zone; comments due by 5-5-08; published 4-3-08 [FR E8-06896]

LABOR DEPARTMENT

Labor-Management Standards Office

Labor Organization Annual Financial Reports; comments due by 5-5-08; published 3-28-08 [FR E8-06301]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation:

Socioeconomic Program Parity; comments due by 5-9-08; published 3-10-08 [FR E8-04561]

NUCLEAR REGULATORY COMMISSION

Decommissioning Planning; Comment Period Extension;

comments due by 5-8-08; published 3-20-08 [FR E8-05650]

Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Comment Period Extension; comments due by 5-5-08; published 2-26-08 [FR E8-03597]

POSTAL SERVICE

Service Barcode Required for Priority Mail Open and Distribute Container Address Labels Address Labels; comments due by 5-5-08; published 4-21-08 [FR E8-08228]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A310 Airplanes; comments due by 5-7-08; published 4-7-08 [FR E8-07163]

Boeing Model 757-200 and 757-300 Series Airplanes; comments due by 5-5-08; published 4-8-08 [FR E8-07302]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and Model ERJ 190 Airplanes; comments due by 5-6-08; published 4-11-08 [FR E8-07667]

Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700-715A1-30, etc.; comments due by 5-5-08; published 4-3-08 [FR E8-06866]

Class E Airspace; Amendment:

Danville, KY; comments due by 5-5-08; published 3-21-08 [FR E8-05575]

Class E Airspace; Establishment:

Canon, GA; comments due by 5-5-08; published 3-20-08 [FR E8-05573]

Lady Lake, FL; comments due by 5-5-08; published 3-21-08 [FR E8-05603]

Sunbury, PA; comments due by 5-5-08; published 3-19-08 [FR E8-05168]

Susquehanna, PA; comments due by 5-5-08; published 3-19-08 [FR E8-05167]

Establishment of Class E Airspace; Milford, PA; comments due by 5-5-08; published 3-21-08 [FR E8-05574]

Proposed Establishment of Colored and VOR Federal Airways; Alaska; comments due by 5-9-08; published 3-25-08 [FR E8-05922]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Advance Construction of Federal-Aid Projects; comments due by 5-5-08; published 3-6-08 [FR E8-04338]

TREASURY DEPARTMENT

Internal Revenue Service

Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts; Guidance Under Section 664; comments due by 5-6-08; published 3-7-08 [FR E8-04576]

Time and Manner for Electing Capital Asset Treatment for Certain Self-Created Musical Works; comments due by 5-8-08; published 2-8-08 [FR E8-02307]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1858/P.L. 110–204

Newborn Screening Saves Lives Act of 2007 (Apr. 24, 2008; 122 Stat. 705)

S. 2903/P.L. 110–205

To amend Public Law 110-196 to provide for a temporary extension of programs authorized by the Farm Security and Rural Investment Act of 2002 beyond April 25, 2008. (Apr. 25, 2008; 122 Stat. 713)

Last List April 25, 2008

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