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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL68

Prevailing Rate Systems; Redefinition of the New Orleans, LA, Appropriated Fund Federal Wage System Wage Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing an interim rule to add St. Charles and St. John the Baptist Parishes, Louisiana, to the survey area of the New Orleans, LA, appropriated fund Federal Wage System wage area. The purpose of this change is to ensure the lead agency for the New Orleans wage area is able to obtain wage data that best represent the prevailing rates paid by businesses in the area.

DATES: *Effective Date:* This regulation is effective on July 9, 2008. We must receive comments on or before August 8, 2008.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is adding St. Charles and St. John the Baptist Parishes, Louisiana, to the survey area of the New Orleans, LA, appropriated fund Federal Wage System (FWS) wage area. The New Orleans survey area currently includes five of the seven parishes of the New Orleans-Metairie-Kenner, LA Metropolitan Statistical Area (MSA)—Jefferson, Orleans, Plaquemines, St. Bernard, and St. Tammany Parishes. The survey area does not include St. Charles and St. John the Baptist Parishes, which are also in the New Orleans-Metairie-Kenner MSA.

While there are currently only five FWS employees working in St. Charles Parish and no FWS employees working in St. John the Baptist Parish, the addition of St. Charles and St. John the Baptist Parishes to the New Orleans survey area provides a desirable increase in the number of surveyable private sector industrial establishments in the New Orleans survey area—about 15 percent more than in the current New Orleans survey area.

This survey area expansion will not create an undue survey burden on the lead agency for the wage area (the Department of Defense) and is strongly justified because of the substantial damage to private sector establishments in the New Orleans area in the aftermath of Hurricane Katrina. Expanding the New Orleans survey area will allow additional private sector establishments to provide wage data that best represents the prevailing rates paid by businesses in the New Orleans area.

This change will be effective for the next full-scale wage survey in the wage area, which is scheduled to begin in November 2008. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended this change by consensus.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because Hurricane Katrina caused substantial economic disruption in the New Orleans wage area affecting the Government's ability to adequately measure local prevailing wage levels. This change is urgent because the next scheduled wage survey in the wage area will occur in November 2008, and the lead agency must begin planning and coordination phases for the survey as soon as possible.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

■ 2. In appendix C to subpart B, the wage area listing for the State of Louisiana is amended by revising the listing for New Orleans to read as follows:

* * * * *

Louisiana

* * * * *

New Orleans

Survey Area

Louisiana:
Jefferson
Orleans
Plaquemines
St. Bernard
St. Charles
St. John the Baptist
St. Tammany

Area of Application. Survey Area Plus

Louisiana:
Ascension
Assumption
East Baton Rouge

East Feliciana
Iberia
Iberville
Lafourche
Livingston
Pointe Coupee
St. Helena
St. James
St. Martin
St. Mary
Tangipahoa
Terrebonne
Washington
West Baton Rouge
West Feliciana

* * * * *

[FR Doc. E8–15598 Filed 7–8–08; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Docket No.: AMS–FV–08–0001; FV–08–701 FR]

Peanut Promotion, Research, and Information Order; Amendment to Primary Peanut-Producing States and Adjustment of Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule that added a producer member and alternate from the State of Mississippi to the National Peanut Board (Board). The change was proposed by the Board, which administers the nationally coordinated program, in accordance to the provisions of the Peanut Promotion, Research, and Information Order (Order) which is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). This change is made because Mississippi is now considered a major peanut-producing state based on the Board's review of the geographical distribution of the production of peanuts. The Order requires a review of the geographical distribution of the production of peanuts at least every five years. The addition of a member from Mississippi will provide for additional representation from another primary peanut-producing state.

DATES: *Effective Date:* August 8, 2008.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; or fax: (202) 205–2800; or e-mail: *Jeanette.Palmer@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Peanut Promotion, Research, and Information Order [7 CFR Part 1216]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The 1996 Act provides that any person subject to an order may file a written petition with the Department of Agriculture if they believe that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The 1996 Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has considered the economic impact of this rule on small entities and has prepared this final regulatory analysis impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as having receipts of no more than $6,500,000.

There are approximately 10,840 producers and 33 handlers of peanuts who are subject to the program. Most producers would be classified as small businesses under the criteria established by the SBA, and most of the handlers would not be classified as small businesses.

The Department's National Agricultural Statistics Service (NASS), reports U.S. peanut production from the 10 major peanut-producing states. The combined production from these states totaled 3.74 billion pounds in 2007. NASS data indicates that Georgia was the largest producer (44 percent of the total U.S. production), followed by Texas (20 percent), Alabama (11 percent), Florida (9 percent), North Carolina (7 percent), South Carolina (5 percent), Mississippi (2 percent), Oklahoma (2 percent), Virginia (2 percent), and New Mexico (1 percent). According to the 2002 Census of Agriculture, small amounts of peanuts were also grown in six other states. NASS data indicates that the farm value of the peanuts produced in the top 10 states in 2007 was $763 million.

Three main types of peanuts are grown in the United States: Runners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region used to grow two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

According to the Department's *Agricultural Statistics* report, in 2005 there were 10,840 commercial producers of peanuts in the United States. If that number of growers is divided into the total U.S. production in 2005, the resulting average is 449,249 pounds of peanuts per grower. Peanuts produced during 2005 provided average gross sales of $77,808 per peanut producer, and the total value of the 2005 crop was approximately $843 million. During the 2005/2006 marketing season (which began August 1, 2005), the per capita consumption of peanuts in the United States was 6.6 pounds, the same as in the 2004/2005 season.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in

the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as ''ballpark'' peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to the Department's Foreign Agricultural Service, exports of the United States peanuts (including peanut meal, oil, and peanut butter expressed in peanut equivalents) totaled 743 million in-shell equivalent pounds in calendar year 2006, with a value of $228 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 19 percent was in peanut butter, 8 percent was blanched or otherwise prepared or preserved peanuts, 4 percent was in-shell peanuts, and 3 percent was shelled oil stock peanuts. The remaining 6 percent represents peanuts exported as either a meal or oil.

The major destinations in 2006 for domestic shelled peanuts for use as nuts are Canada, Mexico, the Netherlands, and Russia. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially Norway, Denmark, and Spain. In-shell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada, Mexico, and Germany. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 164 million in-shell equivalent pounds of peanuts and peanut butter were imported in 2006 with a combined value (freight on board country of origin) of $45 million.

Peanut butter accounted for about 63 percent of the total quantity of nuts (in-shell basis) imported in 2006. Most peanut butter imports come from Canada, Mexico, and Argentina. The other major import category—processed peanuts, are shipped mainly from China. Imports of oil stock shelled peanuts and peanut meal were negligible in the United States.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

The Board is currently composed of 10 producer members and their alternates. There is one producer member and alternate from each of the nine major peanut-producing states (in descending order—Georgia, Texas, Alabama, Florida, North Carolina, South Carolina, Oklahoma, Virginia, and New Mexico) and one at-large member and alternate representing all other peanut-producing states. However, based on the Board's review of the geographical distribution of the production of peanuts, Mississippi is now considered a major peanut-producing state. The Order requires this review at least every five years. The Board membership would move from 10 members and their alternates to 11 members and their alternates.

The addition of a producer member and alternate would be consistent with section 1216.40(b) of the Order which indicates that at least once during each five-year period, the Board shall review the geographical distribution of peanuts and make recommendation to the Secretary of Agriculture (Secretary) to continue without change or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

The Order became effective on July 30, 1999, and it contains provision to add a producer member and alternate if the State meets and maintains a three-year average production of at least 10,000 tons of peanuts. At the Board's December 4–5, 2007, meeting, the Board voted unanimously to add the State of Mississippi as a primary peanut-producing state contingent on the NASS data for the 2007 crop year showing that Mississippi has maintained a three-year average annual peanut production of at least 10,000 tons per year. The most recent NASS data shows that for the years 2005, 2006, and 2007 Mississippi produced 22,400 tons, 23,200 tons, and 29,700 tons of peanuts respectively. Based on this data, the three-year average annual peanut production for Mississippi totals 22,410 tons per year (67,232 divided by 3), which well exceeds the threshold set in the Order.

With regard to alternatives, the Board reviewed the peanut distribution for all the minor peanut-producing states, and Mississippi was the only State that met the Order's requirement for a three-year average peanut production of at least 10,000 tons.

Nominations and appointments to the Board are conducted pursuant to sections 1216.40, 1216.41, and 1216.43 of the Order. According to these sections, appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1216.41(a) of the Order, eligible peanut producer organizations within the State shall nominate two qualified persons for each member and each alternate member. The nomination meeting must be announced 30 days in advance. The nominees should be elected at an open meeting among peanut producers eligible to serve on the Board. At the nomination meeting, the Department will be present to oversee and to verify eligibility and count ballots. The nominees for the producer member and alternate member are then submitted to the Secretary for appointment to the Board.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the background form, which represents the information collection and recordkeeping requirements that may be imposed by this rule, was previously submitted to and approved by OMB under OMB Number 0505–0001.

The public reporting burden is estimated to increase by an average 0.5 hours per response for each of the four producers. The estimated annual cost of providing the information by the four producers would be $19.80 or $4.95 per producer. This additional burden will be included in the existing information collections approved for use under OMB Number 0505–0001.

With regard to information collection requirements, adding a producer member and alternate member representing the State of Mississippi for the Board means that four additional producers will be required to submit background forms to the Department in order to be considered for appointment to the Board. Four producers will be affected because two names must be submitted to the Secretary for consideration for each position on the Board. However, serving on the Board is optional, and the burden of submitting the background form would be offset by the benefits of serving on the Board. The estimated annual cost of providing the information by four producers would be $19.80 for all four producers or $4.95 per producer.

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

Background

The Order became effective on July 30, 1999, and is authorized under the

1996 Act. The Board is composed of 10 producer members and their alternates: one member and alternate from each primary peanut-producing state (in descending order—Georgia, Texas, Alabama, Florida, North Carolina, South Carolina, Oklahoma, Virginia, and New Mexico) and one at-large member and alternate collectively from the minor peanut-producing states. The members and alternates are nominated by producers or producer groups.

Under the Order, the Board administers a nationally coordinated program of promotion, research, and information designed to strengthen the position of peanuts in the market place and to develop, maintain, and expand the demand for peanuts in the United States. Under the program, all peanut producers pay an assessment of one percent of the total value of all farmer's stock peanuts. The assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

Pursuant to section 1216.40(b) of the Order, at least once in each five-year period, the Board shall review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary to continue without change or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

The Board reviewed the most recent NASS data and it reported that in 2005, 2006, and 2007 Mississippi produced 22,400 tons, 23,200 tons, and 29,700 tons of peanuts respectively. Based on this data, the three-year average annual peanut production for Mississippi totals 22,410 tons per year (67,232 divided by 3) which exceeds the requirement set in the Order of 10,000 pounds per year to become a major peanut-producing state. In addition, NASS data showed that Mississippi has produced two percent of the total United States peanut crop which is the same as Oklahoma and Virginia, two of the primary peanut-producing states. At the Board's December 4–5, 2007, meeting, the Board voted unanimously to add Mississippi as a primary peanut-producing state.

Therefore, the addition of a producer member and alternate would carry out the recommendations of the Board. This action will add to the Board a member and an alternate from Mississippi which has become a primary peanut-producing state. The addition of a producer member and alternate member would allow Mississippi representation on the Board's decision making and also potentially provide an opportunity to increase diversity on the Board.

Furthermore, this rule would make amendments to sections 1216.15 and 1216.21 of the Order to add the State of Mississippi as a primary peanut-producing state. Also, this rule would revise sections 1216.40(a) and 1216.40(a)(1) of the Order to specify that the Board will be composed of 11 peanut producer members and their alternates rather than 10.

Nominations and appointments to the Board are conducted pursuant to sections 1216.40, 1216.41, and 1216.43 of the Order. According to these sections, appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1216.41(a) eligible peanut producer organizations within the State as certified pursuant to section 1216.70 shall nominate two qualified persons for each member and each alternate member. The nomination meeting must be announced 30 days in advance. The nominees should be elected at an open meeting among peanut producers eligible to serve on the Board. At the nomination meeting, the Department was present to oversee and to verify eligibility and count ballots. The nominees for the producer member and alternate member will be submitted to the Secretary for appointment to the Board.

An interim final rule concerning this action was published in the **Federal Register** on March 20, 2008 (73 FR 14919). Copies of the rule were made available through the Internet by the Department and the Office of the Federal Register. That rule provided a 30-day comment period which ended on April 21, 2008. Three comments were received by the deadline.

Three favorable comments were received. The commenters state the addition of Mississippi as a major peanut-producing state will ensure that all growers have the opportunity to be equitably represented in setting the vision and goals of the Peanut Promotion, Research, and Information Order.

An interim final rule was published in the **Federal Register** on March 20, 2008 (73 FR 14919), allowing the Board to begin the nomination process to fill the Mississippi member and alternate positions. As a result, the Mississippi nomination process began in April 2008 to allow Mississippi to have representation on the Board for the next term of office beginning January 1, 2009, and ending December 31, 2011.

After consideration of all relevant material presented, the Board's recommendation, and other information, it is hereby found that this rule is consistent with and will tend to effectuate the declared policy of the 1996 Act and therefore should be adopted as a final rule, without change.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ Accordingly, the interim final rule amending 7 CFR part 1216 which was published at 73 FR 14919 on March 20, 2008, is adopted as a final rule without change.

Dated: July 2, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15522 Filed 7–8–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

[No. OTS–2008–0005]

RIN 1550–[AC15]

Optional Charter Provisions in Mutual Holding Company Structures

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its mutual holding company (MHC) regulations to permit certain MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire, beneficial ownership of more than ten percent of the MHC subsidiary's minority stock (stock held by persons other than the subsidiary's MHC).

DATES: *Effective Date:* This final rule is effective on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Donald W. Dwyer, (202) 906–6414, Director, Applications, Examinations and Supervision—Operations; or David A. Permut, (202) 906–7505, Senior Attorney, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 2007, OTS published a notice of proposed rulemaking (NPR) that proposed to amend the MHC Regulations to permit certain MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire beneficial ownership of more than ten percent of the MHC subsidiary's minority stock (stock held by persons other than the subsidiary's MHC).[1]

Under the MHC Regulations, a subsidiary MHC, or, where there is no subsidiary MHC, the former mutual savings association that reorganized into an MHC structure (collectively, Subsidiary Company), may sell less than 50 percent of its voting stock to parties other than the top-tier MHC.[2]

Under the MHC Regulations, a Subsidiary Company may adopt a charter provision that prohibits any person from acquiring, or offering to acquire, beneficial ownership of more than 10 percent of the Subsidiary Company's stock during the five years after a minority stock issuance.[3] The purpose of this provision, as is the case with the provision when applied to fully converted associations, is to lessen the vulnerability of the entity to attempts to take unfair advantage of the results of the offering, to protect the integrity of the offering, and to ensure that the offering is completed in a manner that strengthens the issuer.[4]

OTS has become aware of several situations in which minority stockholders have acquired positions in the minority stock of Subsidiary Companies, and have taken actions that appear intended to influence management to engage in stock repurchases or in a sale of the institution. Because a top-tier MHC is required to retain more than 50 percent of the stock of any Subsidiary Company, holders of minority stock (minority stockholders) cannot control the outcome of most issues presented to the stockholders of a Subsidiary Company. However, there are circumstances where OTS's regulations provide that a majority of the minority stock must approve a proposal.[5]

Minority stockholders may acquire a significant percentage of the minority stock without involving either the OTS Acquisition of Control Regulations (Control Regulations) or the charter provision discussed above, both of which are triggered by an acquisition of more than ten percent of the outstanding stock. Thus, for example, if a Subsidiary Company issues thirty percent of its stock in a public offering, a minority stockholder could acquire a third of those shares without implicating either the Control Regulations or the charter provision. In such a case, the minority stockholder may obtain a significant amount of influence, based on its ability to vote on the issues that must be presented separately to minority stockholders.

OTS believes that such a result would be contrary to the purposes of the restrictions addressing post-offering acquisitions of stock in the context of conversions and minority stock offerings, that is, lessening the vulnerability of the entity to attempts to take unfair advantage of the results of the offering, to protect the integrity of the offering, and to ensure that the offering is completed in a manner that strengthens the issuer. Therefore, OTS proposed to add a provision to the MHC Regulations, which could be adopted only by Subsidiary Companies, that would provide that no entity, or person or group acting in concert could acquire more than ten percent of the outstanding minority stock of the Subsidiary Company during the five years after a Minority Stock Issuance. If a stockholder violated this charter provision, the stockholder would not be permitted to vote any stock the stockholder acquired in excess of the limit.

OTS proposed that the charter provision would not limit the stockholdings of the parent MHC, because the parent MHC, under the Home Owners' Loan Act, must own more than fifty percent of the Subsidiary Company. In addition, OTS proposed that the charter provision except stock held by the Subsidiary Company's Employee Stock Ownership Plan (ESOP) from this limitation, because ESOP acquisitions do not present the concerns that have resulted in OTS limiting post-conversion acquisitions of stock.[6]

II. Public Comments

OTS received 8 comments, from 7 commenters, regarding the NPR. Of these comment letters, four were from trade associations, three were from law firms and one was from an investment firm. Five of the comment letters supported the proposal and three (including two letters from one commenter) opposed the proposal. Four of the five comments in favor of the proposal were submitted by trade associations, and one was from a law firm. Of the three comments opposing the proposal, one was from the investment firm, and the other two were from an attorney who wrote on behalf of his client.

All of the comments in favor of the proposal supported OTS's reasoning as set forth in the NPR, and evidenced a belief that the proposal would appropriately limit the amount of influence minority shareholders would have over management. One commenter stated that the proposed restriction was reasonable in order to keep activist shareholders from ''engaging in control'' over an MHC.

The two commenters who opposed the proposal cited several arguments supporting their position. They asserted that the optional charter provision would make already illiquid stock less liquid; would disenfranchise shareholders, and violate fundamental shareholder rights; was overkill to stop minority shareholders from taking actions to influence management; and was proposed in order to assist management to avoid shareholder accountability and undo the requirement that a majority of minority shareholders vote in favor of management stock benefit plans. These commenters also asserted that the proposed charter provision has no nexus to protecting the conversion (or the minority stock offering process).

In addition, the comments raised technical issues regarding the proposed charter provision.

OTS has carefully considered the public comments. Specific topics addressed by one or more commenters are discussed below. Except as otherwise noted in the discussion below, OTS is adopting the amendments to its regulations as proposed in the NPR.

A. Adoption and Retention of the Charter Provision

Three commenters addressed the time period during which a Subsidiary Company could enact and retain the optional charter provision. Two commenters asked for clarification regarding when the provision could be adopted. In addition, two commenters addressed the length of time for which a charter could include the provision in question. One commenter suggested that Subsidiary Companies should have the ability to determine how long to retain

[1] *See* 72 FR 35205 (Jun. 27, 2008).

[2] *See* 12 CFR 575.7 and 575.14(b)(2008). *See also* 12 U.S.C. 1467a(o)(8)(B).

[3] *See* 12 CFR 552.4(b)(8) and 575.14(c)(2)(2008).

[4] *See, e.g.,* Federal Home Loan Bank Board Order No. 84–90 (Feb. 23, 1984).

[5] *See* 12 CFR 563b.500(a)(7), 563b.555, 575.11(i) and 575.12(a)(3) (2008).

[6] *See* 12 CFR 563b.525(c)(4)(2008), and the optional charter provision at section 552.4, both of which except ESOPs from the post-conversion acquisition restrictions of section 563b.525.

the charter provision, with five years as the outside limit, and another suggested that OTS should permit a Subsidiary Company to retain the charter provision as long as the company considers it appropriate.

OTS is revising the final regulation to provide clearly that, subject to certain limitations discussed below, a Subsidiary Company may adopt the optional charter provision before it conducts its first minority stock offering, at the time of a minority stock offering, or at any time during the five years following the closing of the minority stock offering. However, regardless of when the charter provision is adopted, the charter provision must expire at some time during the five year period that commences upon the closing of the minority stock offering.

OTS has considered the comment requesting that OTS permit the Subsidiary Company to decide for itself how long the charter provision should remain in place. The NPR stresses that the purpose of the charter provision is to lessen attempts to take unfair advantage of the results of an offering, protect the integrity of the offering, and ensure that the offering is completed in a manner that strengthens the issuer. OTS believes that these concerns lessen significantly when more than five years have elapsed since the completion of the offering in question. Accordingly, OTS is retaining the requirement that the provision may be in place only during the five years after the closing of an offering.

B. Applicability of the Charter Provision Where a Shareholder Has Already Acquired More Than Ten Percent of the Minority Stock

The comments that opposed the optional charter provision raised several issues that ultimately related to the manner in which the provision would operate if a shareholder had acquired more than ten percent of the minority stock before the charter provision had been adopted. In this regard, the comments asserted that the rule disenfranchises large stockholders, and that sterilization of shares in excess of ten percent of the minority shares is inappropriate. One of the commenters urged that OTS make the rule applicable only prospectively.

OTS has carefully considered these comments. The NPR did not specifically discuss situations in which a minority shareholder had acquired shares in excess of the limit in the optional charter provision prior to adoption of the provision, and did not contemplate situations in which a shareholder who held shares before adoption of the charter provision would no longer be able to vote those shares.

OTS considered prohibiting a Subsidiary Company from adopting the charter provision only where a party had already acquired more than ten percent of the minority shares, and also considered excepting (''grandfathering'') parties who had acquired more than ten percent of the minority shares at the time of the adoption of the charter provision from the restrictions in the optional charter provision. OTS does not believe that either approach would work well, due to difficulties in knowing how many shares a minority shareholder holds at a particular time. For either approach to work, it would be necessary for shareholders who would not otherwise be subject to reporting requirements to provide information regarding their holdings, and OTS does not believe it is appropriate to impose special reporting requirements on minority shareholders of Subsidiary Companies.

Accordingly, OTS is revising the final regulation to provide that only Subsidiary Companies that have not engaged in minority stock issuance prior to the effective date of the regulation, may adopt the optional charter provision.

OTS is not prohibiting Subsidiary Companies that engage in their initial minority stock offering after the effective date of this regulation from adopting the optional charter provision, even if they do so after a minority stock issuance, and after a minority shareholder acquires more than ten percent of the Subsidiary Company's minority stock. In order to adopt the optional charter provision after a minority stock issuance, however, the Subsidiary Company must provide full disclosure in the offering materials regarding the possibility that the optional charter provision may be adopted at a later time.[7] Accordingly, even if there was no restriction at the time a shareholder acquires a Subsidiary Company's minority stock, such a shareholder will do so with knowledge that its voting power may be adversely affected if the Subsidiary Company later adopts the optional charter provision.

OTS believes that this approach eliminates concerns that the charter provision inappropriately sterilizes votes,[8] violates shareholder rights, or is in any way inconsistent with sound corporate governance.

C. Liquidity

The commenter who addressed liquidity stated that the proposed charter provision would reduce liquidity of the stock of recently converted Subsidiary Companies, because acquirors who otherwise wished to purchase more than ten percent of the Subsidiary Company's shares would not be allowed to do so. OTS notes, however, that such purchases may ultimately decrease liquidity, by reducing, possibly significantly, the number of minority shareholders. The proposed rule may ultimately have the effect of increasing the number of minority shareholders over the number that would otherwise be the case, thereby increasing liquidity. Accordingly, the effect of the charter provision on liquidity is unclear. OTS does not believe that the charter provision will raise significant liquidity concerns.

D. Management Accountability

Comments that opposed the proposed charter provision asserted that the provision helps management avoid accountability to shareholders, and conflicts with the final rule promulgated in 2007 that required that a majority of the minority shareholders vote in favor of stock benefit plans proposed by Subsidiary Companies.[9]

OTS does not believe the charter provision either enables management to avoid shareholder accountability or conflicts with the 2007 final rule requiring a majority of the minority vote in favor of stock benefit plans. The proposed charter provision merely prohibits a single entity from acquiring more than ten percent of the minority shares. Where a separate minority shareholder vote is required, a majority of such shareholders must vote in favor of a matter in order for it to be passed. Accordingly, management remains accountable to shareholders, and the charter provision does not raise the conflict of interest issues that led OTS to continue to require a majority of the minority vote.[10]

E. Purpose of the Charter Provision

With regard to the comments that the only purpose of the charter provision is to make it easier to pass benefit plans,

[7] If the Subsidiary Company engages in multiple minority stock issuances, it would have to make the appropriate disclosures in all such offerings.

[8] OTS has long considered sterilization to be appropriate where an acquiror has violated a regulatory or charter restriction. Both the OTS Mutual-to-Stock conversion regulations and the charter provision at 12 CFR 552.4 include sterilization provisions that apply where the acquiror has violated OTS regulations, or a charter provision, and have included such provisions since the 1970s.

[9] See 72 FR 35145 (2007).

[10] See 72 FR 35145, at 35147–35148 (June 27, 2007).

and that the charter provision is intended to protect insiders' interests, OTS set forth the rationale for the proposed charter provision in the NPR, and has repeated the rationale above. The charter provision does not prevent minority shareholders from voting in opposition to a proposed benefit plan. The charter provision would make it more difficult for a single shareholder to prevent the passage of stock benefit plans, but minority shareholders, as a class, continue to have the power to vote down a stock benefit plan.

F. Treatment of Proxies

One commenter requested clarification regarding whether the charter provision would prohibit a shareholder from soliciting revocable proxies. The regulatory restriction regarding acquisitions of more than ten percent of a class of voting stock after a mutual-to-stock conversion, at 12 CFR 563b.525, provides that ''a person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of * * * stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter.'' The corresponding optional charter provision at 12 CFR 552.4 has been interpreted to apply to proxies in the same manner.[11] OTS is not aware of any reason to treat proxies differently in the context of the charter provision addressed herein.

III. Regulatory Findings

A. Paperwork Reduction Act

OTS has determined that the final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12866

The Director of OTS has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601), the Director certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule would permit Subsidiary Companies to adopt an optional charter provision. Accordingly, OTS has determined that a Regulatory Flexibility Analysis is not required.

D. Unfunded Mandates Reform Act of 1995

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more and that a budgetary impact statement is not required under Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act). The final rule would permit Subsidiary Companies to adopt an optional charter provision. The final rule changes should not have a significant impact on small institutions. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings Associations, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, OTS is amending Chapter V of title 12 of the Code of Federal Regulations, as set forth below:

PART 575—MUTUAL HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

■ 2. Amend § 575.9 by redesignating paragraph (c) as (d), and adding a new paragraph (c) as follows:

§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.

* * * * *

(c) *Optional charter provision limiting minority stock ownership.* A federal resulting association or federal acquiree association that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time of such minority stock issuance, or at any time during the five years following a minority stock issuance that such association conducts in accordance with the purchase priorities set forth in 12 CFR part 563b, include in its charter the following provision. For purposes of this charter provision, the definitions set forth at § 552.4(b)(8) of this chapter apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The federal resulting association or federal acquiree association may adopt the charter provision after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the association might adopt such a charter provision.

Beneficial Ownership Limitation. No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the association held by persons other than the association's mutual holding company. This limitation expires on [insert date of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan that is exempt from the approval requirements under § 574.3(c)(1)(vii) of the Office's regulations.

In the event a person acquires stock in violation of this section, all stock beneficially owned by such person in excess of 10 percent of the stock held by stockholders other than the mutual holding company shall be considered ''excess shares'' and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

* * * * *

■ 3. Amend § 575.14 by redesignating paragraphs (c)(3) and (4) as (4) and (5), respectively, and add a new (c)(3) to read as follows:

§ 575.14 Subsidiary holding companies.

* * * * *

(3) *Optional charter provision limiting minority stock ownership.* A subsidiary holding company that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time it conducts its initial minority stock issuance, or at any time during the five years following a minority stock issuance that such subsidiary holding company conducts in accordance with the purchase priorities set forth in 12 CFR part 563b, include in its charter the provision set forth below. For purposes of this charter provision, the definitions set forth at § 552.4(b)(8) of this chapter apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The

[11] *See* FHLBB Ops., Dep. G.C. (Aug. 14, 1986, and Oct. 21, 1988).

subsidiary holding company may adopt the charter provision after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the association might adopt such a charter provision.

Beneficial Ownership Limitation. No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the association held by persons other than the subsidiary holding company's mutual holding company parent. This limitation expires on [insert date of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 574.3(c)(1)(vii) of the Office's regulations.

In the event a person acquires stock in violation of this section, all stock beneficially owned in excess of 10 percent shall be considered ''excess stock'' and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

* * * * *

Dated: June 20, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–14374 Filed 7–8–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0915; Airspace Docket No. 07–ASW–13]

Establishment of Class D Airspace; Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Albuquerque, NM. Establishment of an air traffic control tower at Double Eagle II Airport, Albuquerque, NM, has made this action necessary for the safety of Instrument Flight Rule (IFR) operations at the airport. This action also makes minor corrections to the geographic coordinates of the airport.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

On April 9, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at Albuquerque, NM (73 FR 19174, 07–ASW–13 Docket No. FAA–2007–0915). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. This rule makes minor corrections to the geographic coordinates of Double Eagle II Airport. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace extending upward from the surface to and including 7,500 feet MSL within a 4.3-mile radius of Double Eagle II Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 controlled airspace at Double Eagle II Airport, Albuquerque, NM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW NM D Albuquerque, NM [New]

Double Eagle II Airport, NM
(Lat. 35°08′43″ N., long. 106°47′43″ W.)

That airspace extending upward from the surface to and including 7,500 feet MSL within a 4.3-mile radius of Double Eagle II Airport, and within 1 mile each side of the Double Eagle Runway 22 ILS localizer northeast course, extending from the 4.3-mile radius to 5.9 miles northeast of the airport. This Class D airspace area is effective during

the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on June 27, 2008.

Donald R. Smith,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E8–15237 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0339; Airspace Docket No. 08–ASW–5]

Amendment of Class D and Class E Airspace; Altus AFB, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: A direct final rule, published in the **Federal Register** April 14, 2008 (73 FR 19997) docket No. FAA–2008–0339, adding additional Class D and Class E airspace at Altus AFB, Altus, OK, is being withdrawn. Although the rule became effective June 5, 2008, charting of this airspace was never completed. A new rulemaking will be forthcoming with an effective date that coincides with the new charting date.

DATES: *Effective Date:* 0901 UTC July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76193–0530; telephone number (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

On April 14, 2008, the FAA published a direct final rule; request for comments, in the **Federal Register** (73 FR 19997) Docket No. FAA–2008–0339, amending the existing Class D and Class E airspace areas at Altus AFB, Altus, OK. No comments were received therefore the rule became effective on the date specified, June 5, 2008. It was then determined that the airspace had not been charted. Therefore, the FAA is withdrawing this rulemaking and will issue a new rulemaking with a new effective date to coincide with the charting date.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Withdrawal of the Rule

■ Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 08–ASW–5, as published in the **Federal Register** on April 14, 2008 (73 FR 19997), is hereby withdrawn.

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

Issued in Fort Worth, TX, on June 27, 2008.

Donald R. Smith,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E8–15235 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0160; Airspace Docket No. 08–AEA–13]

Establishment of Class E Airspace; Milford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 15061) that establishes Class E Airspace at Milford, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Myer Airport.

DATES: Effective 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on March 21, 2008 (73 FR 15061), Docket No. FAA–2008–0161; Airspace Docket No. 08–AEA–13. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 25, 2008. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on June 4, 2008.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–15236 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA74

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final Rule.

SUMMARY: Section 324 of the Energy Independence and Security Act of 2007 requires the Commission to issue labeling rules for metal halide lamp fixtures and ballasts. In accordance with this directive, the Commission has completed the required rulemaking and is publishing final amendments to the Appliance Labeling Rule (''Rule'').

DATES: The amendments published in this final rule will become effective on January 1, 2009.

ADDRESSES: Requests for copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889,

Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: As directed by the Energy Independence and Security Act of 2007 (''EISA'' or ''Act'') (Pub. L. 110–140), the Commission has conducted a rulemaking to create new labeling requirements for the Appliance Labeling Rule (16 CFR Part 305) for metal halide lamp fixture packaging and ballasts contained within those fixtures. On April 1, 2008, the Commission published a Notice of Proposed Rulemaking (''NPRM'') seeking comment on draft labeling requirements for halide lamp fixtures (63 FR 17263). The Commission is now publishing final amendments to the Rule. In support of these amendments, this Notice provides information about EISA's requirements, a description of the FTC's amendments to implement that law, and a discussion of comments received in response to the proposed amendments. The Notice also explains that the FTC will be conducting a separate rulemaking in the future related to energy disclosures for lamp products as required by EISA. Finally, this Notice contains analysis under the Paperwork Reduction Act and Regulatory Flexibility Act.

I. Labeling for Metal Halide Lamp Fixtures

A. *EISA's Directive:* Section 324(d) of EISA amends the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*) (''EPCA'') to require the Commission to issue labeling rules for metal halide lamp fixture packaging and ballasts. The law limits these labeling requirements to products that are subject to Department of Energy (''DOE'') efficiency standards issued pursuant to 42 U.S.C. 6295. Under EISA, the Commission must prescribe these rules by July 1, 2008. The statute also directs that the rules, once issued, must apply to any fixture manufactured on or after January 1, 2009.

EISA defines a ''metal halide lamp'' as a ''high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.''[1] These lamps produce a bright, white light and offer high color rendition compared to other high-intensity lighting. They typically light large indoor areas, such as gymnasiums and sports arenas, as well as outdoor areas, such as car lots.[2] As discussed below, the Commission is issuing labeling rules for metal halide lamp fixtures consistent with the directive of EISA.

Specifically, EISA directs the FTC to issue a rule requiring manufacturers to label metal halide lamp fixture packages and the ballasts in those fixtures with ''a capital letter 'E' printed within a circle.''[3] The encircled capital letter ''E'' (*i.e.*, circle ''E'') will indicate that the product meets applicable DOE energy efficiency standards consistent with the labeling requirements for other lighting products.[4] Because EISA excludes some metal halide lamp fixture types from those efficiency standards[5] and the FTC labeling requirements only apply to products that meet the DOE standards, the circle ''E'' will aid consumers in identifying products that satisfy the DOE standard.

B. *FTC's Final Requirements:* In its NPRM, the Commission proposed amendments to the Appliance Labeling Rule to implement EISA's directive. The final amendments follow the proposed rule provision (with some minor exceptions explained in Section II of this Notice). There are four basic elements to the final amendments.

First, the amendments insert metal halide lamp fixtures into the list of covered products at Section 305.2 and include metal halide lamp fixtures in the descriptions of covered products at Section 305.3.[6]

Second, the amendments (§ 305.15(c)) require that the circle ''E'' be clearly and conspicuously disclosed in color-contrasting ink on the label of metal halide lamp fixture packages and the ballasts contained in those fixtures. Consistent with current requirements for similar products, this disclosure will be deemed conspicuous, in terms of size, if it appears in typeface at least as large as either the manufacturer's name or another logo disclosed on the label (*e.g.*, ''UL'' or ''ETL''), whichever is larger.[7]

Third, the amendments (§ 305.20) require retail catalog sellers to include the circle ''E'' in their descriptions of metal halide lamp fixtures.[8] The final amendments also require the circle ''E'' disclosures in point of sale promotional material as required for other covered products (§ 305.19).[9]

Finally, consistent with requirements for other covered products, the final amendments add reporting requirements for metal halide lamp fixtures to section 305.8 of the Rule.[10]

II. Comments Received in Response to Proposed Rule

The Commission received one written comment in response to the NPRM. The comment, submitted by the National Electrical Manufacturers Association (''NEMA''), raised four issues. Specifically, it requested that the Commission: 1) extend the deadline for the publishers of printed catalogs to meet the Rule's requirements; 2) eliminate the proposed annual reporting requirement; 3) eliminate the proposed requirement that manufacturers include the circle ''E'' on shipping documents for metal halide products; and 4) consider adding a requirement that the circle ''E'' appear on metal halide fixtures themselves in addition to packaging and ballasts. Each of these issues is addressed in turn.

Printed Catalog Disclosures: Consistent with requirements for other products covered by the Rule, the amendments (§ 305.20) require retail catalog sellers to include the circle ''E'' in their descriptions of metal halide

[1] *See* Pub. L. 110–140, 324(a). The Act also contains definitions for ''metal halide ballast'' (used to start and operate metal halide lamps) and ''metal halide lamp fixture.''

[2] *See http://www.eere.energy.gov/consumer/* (''A Consumer's Guide to Energy Efficiency and Renewable Energy'').

[3] 42 U.S.C. 6294(a)(2)(C)(ii). EISA mandates FTC labeling rules for metal halide lamp fixtures and ballasts contained in those fixtures. It does not specifically require labeling for metal halide lamps themselves.

[4] Under EISA (42 U.S.C. 6294(a)(2)(C)), the FTC's labeling rules cover only those fixtures subject to DOE efficiency standards issued pursuant to 42 U.S.C. 6295. Section 324(e) of EISA (42 U.S.C. 6295(hh)) specifically mandates DOE energy standards for metal halide lamp fixtures. Those standards become effective on the same date as the FTC's labeling requirements.

[5] 42 U.S.C. 6295(hh)(1)(B).

[6] These descriptions are the same as the definitions in EISA (*see* 42 U.S.C. 6291(62–64)) except that the FTC amendments limit the description of ''metal halide lamp fixtures'' to models subject to DOE efficiency standards. In addition, in the final amendments, the descriptions of metal halide-related terms in section 305.3 appear in a different order than in the proposed amendments. In the proposed amendments, the descriptions implied that fixtures, lamps, and ballasts are all separate covered products. In the final amendments, the order and appearance of these descriptions clarify that only ''metal halide lamp fixtures''(not ballasts or lamps) are covered products.

[7] These requirements track existing requirements for fluorescent lamp ballasts and luminaires (*see* 16 CFR 305.15(a)&(b)).

[8] EPCA requires energy disclosures for catalog sellers of covered products. (42 U.S.C. 6296(a)).

[9] EPCA authorizes the Commission to require such point of sale disclosures for covered products (42 U.S.C. 6294(c)(4)). The current Rule contains similar requirements for fluorescent lamp ballasts (305.19(a)(2)).

[10] Under Section 305.8, the final amendments will require the submission of data including, but not limited to, model number, voltage, and ballast efficiency. The proposed due date for annual reports of these products was March 1 of each year. As discussed in section II of this Notice, the reporting date in the final amendments is September 1 of each year.

lamp fixtures. Such catalogs include websites and traditional paper catalogs. In its comments, NEMA sought more time to allow manufacturers to revise their paper catalogs because it was concerned that manufacturers would incur large costs reprinting paper catalogs outside of their standard printing cycles.

The Commission believes that NEMA's comment is reasonable and that additional compliance time would not have a significant impact on the efficacy of disclosures. Accordingly, the final amendments apply to any catalog published after July 1, 2009 (instead of January 1, 2009 as proposed in the NPRM).[11]

Reporting Requirements: NEMA also opposed the proposed yearly reporting requirements because, in its view, they would be overly burdensome. NEMA also took issue with the FTC's reporting burden estimate, arguing that the FTC should take into account the many product lines (''well over 100'') in the industry and not just the number of manufacturers. Finally, NEMA stated that, if the FTC is unable to eliminate the reporting requirement, then the agency should establish an electronic database to ease the reporting burden.

The final amendments retain the proposed reporting requirements. Under Section 326 of EPCA (42 U.S.C. 6296), manufacturers of covered products must submit annual reports to the Commission containing energy data for their products. This annual reporting requirement is applicable to all products covered by the Rule, including appliances, heating and cooling equipment, covered lighting products, and covered plumbing products. Accordingly, the Commission has no discretion to forgo reporting. However, to provide manufacturers with additional time in preparing their initial (2009) report, the Commission has changed the annual reporting date for metal halide lamp fixtures from March 1 of each year to September 1 (*see* Section 305.8(b)(1)).[12] While this change does not eliminate the annual reporting requirement, it will give manufacturers more time to gather data on their models for the initial (2009) report. Once manufacturers have assembled their data for the first (2009) annual report, they should be able to use that data as a starting point for preparing reports in subsequent years, thus making it easier to prepare reports thereafter.

Although the Commission cannot eliminate the reporting requirement, it does seek to provide manufacturers with flexibility in submitting their reporting data. For example, the FTC allows manufacturers to submit data through a variety of means, including paper letters, printed catalogs, and electronic files via email. In addition, the Commission understands that the DOE is considering the development of a web-based system to facilitate the submission of energy data for covered products. If such a system is implemented, it may provide an additional means of simplifying FTC data submission.

Disclosures on Shipping Documents: NEMA also took issue with a portion of the proposed Rule that would require the circle ''E'' on documentation accompanying pallet loads of fixtures under section 305.15(c)(3). NEMA argued that this requirement adds no value because the shipping document does not help those who purchase products. NEMA also argued that the disclosure fails to aid enforcement efforts because inspectors do not review shipping documents to determine compliance with efficiency standards.

In this regard, NEMA has raised valid concerns. The benefit of the disclosure on shipping documents is unclear. For purchases outside of brick and mortar stores, the Rule's website and catalog disclosures provide the information consumers need to determine compliance with energy standards. Similarly, because the final amendments require the circle ''E'' disclosure on the pallet sheeting itself, there appears to be little need to include it in separate shipping documentation. Accordingly, the final amendments do not include this requirement.[13]

Marking on Metal Halide Fixture: Finally, NEMA urged the Commission to consider requiring the circle ''E'' on the fixture itself, in addition to the package and ballasts as proposed. NEMA indicated that such a requirement would ''provide more visibility for the enforcement of the law and ensure that compliant manufacturers remain competitive.''

The Commission has considered NEMA's suggestion and decided not to require the disclosure on fixtures at this time. The statute appears broad enough to provide the FTC with discretion to require marking on the metal halide fixture itself because the law contains a general mandate for the Commission ''to issue labeling rules'' for metal halide lamp fixtures. Such a requirement, however, would constitute a significant departure from the proposed amendments, which track Congress's specific directive for labeling on packages and ballasts. Given this significant departure, it would be appropriate to seek further comment before making such a change. However, if the Commission were to delay this proceeding to seek such comment, it could not meet the July 1, 2008 Congressional deadline. Accordingly, the Commission has determined to issue the Rule as proposed. The upcoming rulemaking on the lamp labeling alternatives (discussed below) will provide an opportunity for further consideration of this issue. For now, although the final amendments will apply only to the fixture package and the ballast itself, nothing prohibits manufacturers from printing the circle ''E'' on the fixture itself as long as the fixture meets applicable energy standards.

III. Upcoming Rulemaking on the Effectiveness of Lamp Labeling

EISA requires the FTC to conduct a rulemaking to examine the effectiveness of current lighting disclosures required by the Commission and to explore alternative labeling approaches.[14] To meet the Congressional deadline for metal halide lamp fixture labeling requirements, the Commission will initiate the rulemaking on lamp label effectiveness as a separate proceeding.

IV. Paperwork Reduction Act

The proposed requirements for package and product labels, as well as point-of-sale materials and catalog disclosures do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) because they are a ''public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public'' as indicated in

[11] NEMA did not specify an additional time period necessary for marketers to redraft their catalogs. Absent any specific suggested time period, the Commission has afforded marketers an additional six months, giving them more than a full annual printing cycle to comply.

[12] The final rule also contains a slight clarification to the reporting requirements. The EISA amendments (42 U.S.C. 6293(b)(18)) dictate the DOE test procedure that must be used for metal halide lamp ballasts. The final FTC reporting requirements (section 305.8(a)(5)(vii)) contain a reference to that statutory requirement to ensure that ballast efficiency data submitted to the FTC are consistent with the results of the DOE test procedure. The FTC labeling rule itself does not impose testing requirements for metal halide products.

[13] A similar requirement applies to disclosures for fluorescent lamp ballasts and luminaires (16 CFR § 305.15(a)&(b)). The upcoming rulemaking on the effectiveness of lighting disclosures will give the Commission an opportunity to review the appropriateness of that requirement.

[14] EISA Section 321(b) (42 U.S.C. 6294(a)(2)(C)).

OMB regulations.[15] The data reporting from metal halide lamp ballast manufacturers, however, would constitute a ''collection of information.''[16] Consistent with past estimates for fluorescent ballast manufacturers, we estimated in the NPRM that such reporting would require six hours per manufacturer. We also estimated that there are approximately 20 manufacturers of metal halide lamp fixtures.[17] NEMA's comments, however, indicated that, while there are approximately 20 manufacturers, some of those manufacturers have multiple divisions or product lines. NEMA estimates that there are ''well over 100'' such lines within the industry. Accordingly, in the final estimate, we conservatively assume there are 110 divisions or product lines and that reporting will require six hours for each of these entities (*i.e.*, the same amount of time we estimate for a manufacturer).[18] Therefore, our final estimate is 660 hours (110 product/division lines x 6 hours) as a reporting burden for these entities. In addition, we estimate that the yearly recordkeeping burden for metal halide manufacturers will be no more than 2 hours each or 220 hours total (2 hours x 110 product/division lines). Therefore, the total estimated annual burden of the final amendments is 880 hours. Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the FTC submitted to the Office of Management and Budget (OMB) for review and approval the collections of information contained in the Rule. On May 23, 2008, under OMB Control No. 3084–0069, OMB granted approval through May 31, 2011.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide a Final Regulatory Flexibility Analysis (''FRFA'') with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

In light of the comments submitted in response to the NPRM, the FTC reaffirms its belief that the amendments will not have a significant economic impact on a substantial number of small entities. Although the Commission certifies under the RFA that the rule in this notice will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, to publish a FRFA to explain the impact of the Rule on small entities as follows:

A. Statement of the need for, and objectives of, the amendments

Section 324 of EISA requires the Commission to issue labeling rules for metal halide lamp products. EISA specifies the content of such labels to provide energy information for purchasers. Also, the Commission is charged with enforcing the requirements of 42 U.S.C. 6294, which require the agency to issue these amendments. The objective of the amendments are to establish energy labeling requirements for metal halide lamp fixtures and ballasts.

B. Issues raised by comments in response to the initial regulatory flexibility analysis

No significant issues were raised by public comment related specifically to small business impacts. NEMA's comment raised concerns about the compliance burden related to catalog disclosures and reporting requirements. As discussed in detail in Section II of this Notice, the Commission has changed aspects of the amendments to address these concerns.

C. Estimate of the number of small entities to which the amendments will apply

Under the Small Business Size Standards issued by the Small Business Administration, lighting fixture manufacturers qualify as small businesses if they have fewer than 500 employees. As discussed in more detail in Section III of this Notice, the Commission estimates that only a small fraction of lamp fixture manufacturers (approximately 20 entities) produce metal halide lamp fixtures and ballasts. Even if most of these entities were small businesses, the number would not be substantial.

The Commission also estimates that 200 catalog retailers (including website sellers) would have to comply with the new reporting requirements, most or all of which are probably small businesses. As with catalog sellers of fluorescent lamp ballasts under the current rule, catalog sellers of metal halide fixtures and ballasts would have to insert the circle ''E'' in each description of metal halide lamp fixtures they offer for sale. We expect that the burden associated with such disclosures will be *de minimis*.

D. Projected reporting, recordkeeping, and other compliance requirements

The Commission recognizes that the final labeling rule will involve some increased costs for affected parties. Most of these costs will be in the form of redrafting information placed on packages and products and placing the required disclosure in paper and web-based catalogs. Specifically, the amendments require that labels for metal halide lamp fixtures and ballasts, and point-of-sale promotional material for fixtures, disclose a circle ''E.'' As manufacturers already include information on packages and ballasts in the ordinary course of business, the Rule will require manufacturers to reformat their labels only one time to include the circle ''E'' symbol. The requirement that catalog sellers include the circle ''E'' in their product descriptions will involve the same, one-time change to all of the metal halide lamp fixture descriptions in the seller's catalog. Similarly, the Rule contains standard reporting requirements for manufacturers to submit data that, in all likelihood, they already generate and disseminate during the normal course of business in catalogs and other disclosures.

The Commission does not expect that there will be any significant legal, professional, or training costs or skills needed to comply with the Rule. The Commission does not expect that the labeling requirements will impose significant incremental costs for websites or other advertising. Thus, the Commission anticipates that, in total, the burdens imposed by the amendment should not be significant for any particular entity.

E. Alternatives considered

The amendments closely track the prescriptive requirements of the statute, and thus leave little room for significant alternatives to decrease the burden on regulated entities. Although the Commission has no discretion on the timing of the labeling requirements for the products and product packages, the statutory deadline does not apply to catalog disclosures or reporting requirements. Accordingly, in response

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[15] 5 CFR 1320.3(c)(2).

[16] The final amendments impose no reporting requirements on catalog sellers.

[17] This number (20) is consistent with our estimate for fluorescent lamp ballast manufacturers. *See* 69 FR 64289, 64291 (Nov. 4, 2004). U.S. Economic Census data indicate that there are approximately 80 electric lamp bulb and part manufacturers, 473 residential electric lighting fixture manufacturers and 356 commercial, industrial, and institutional electric lighting fixture manufacturers in the U.S. *See* (*http://www.census.gov/econ/census02/guide/INDRPT31.HTM*) (Codes 335110, 335121, and 335122).

[18] This assumption applies across all the industry, regardless of the size of a particular manufacturer's product line or division. We believe this assumption is very conservative because some product lines or divisions may be very small and require substantially less than six hours of burden per year.

to comments, the Commission has extended the time given to manufacturers to comply with the catalog disclosure requirements and has changed the annual reporting date as explained in Section II of this Notice. In addition, the Commission routinely allows manufacturers to submit required data through electronic means.

VI. Final Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons set out above, the Commission is issuing the following amendments to 16 CFR Part 305:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (''APPLIANCE LABELING RULE'')

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

§ 305.2 [Amended]

■ 2. In paragraph (k)(2) of section 305.2, add the phrase ''metal halide lamp fixtures,'' after the phrase ''fluorescent lamp ballasts,''.

■ 3. In § 305.2, revise paragraph (l)(21), and add paragraph (l)(22) to read as follows:

§ 305.2 Definitions.

* * * * *

(1) * * *

(21) Metal halide lamp fixtures.

(22) Any other type of consumer product that the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

* * * * *

■ 4. In section 305.3, add paragraph (s) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(s) *Metal halide lamp fixture* means a light fixture for general lighting application that is designed to be operated with a metal halide lamp and a ballast for a metal halide lamp and that is subject to and complies with Department of Energy efficiency standards issued pursuant to 42 U.S.C. 6295.

(1) *Metal halide ballast* means a ballast used to start and operate metal halide lamps.

(2) *Metal halide lamp* means a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

* * * * *

■ 5. Section 305.8 is amended as follows:

■ a. In paragraph (a)(1), add the phrase ''metal halide lamp fixtures,'' after the phrase ''fluorescent lamp ballasts,''.

■ b. Add paragraph (a)(5).

■ c. Revise paragraph (b)(1) to read as follows:

§ 305.8 Submission of data.

* * * * *

(a) * * *

(5) Each manufacturer of a metal halide lamp fixture shall submit annually to the Commission a report for each basic model of metal halide lamp fixture in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the metal halide lamp fixture is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) Type of ballast (*e.g.*, pulse, probe, or electronic);

(vi) Nominal input voltage and frequency;

(vii) Ballast efficiency (as determined pursuant to 42 U.S.C. 6293(b)(18)); and

(viii) Lamp type and wattage (or range of wattages) with which the metal halide lamp fixture is designed to be used.

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to theCommission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	May 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
Fluorescent lamps	Mar. 1
	[Stayed]
Medium Base Compact Fluorescent Lamps.	Mar. 1
	[Stayed]
Incandescent Lamps, incl. Reflector Lamps.	Mar. 1
	[Stayed]

* * * * *

§ 305.10 [Amended]

■ 6. In paragraph (a) of section 305.10, add the phrase ''metal halide lamp fixtures,'' after the phrase ''fluorescent lamp ballasts,''.

■ 7. In section 305.15, add paragraph (c) to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(c) *Metal halide lamp fixtures and metal halide* ballasts —(1) *Contents.* Metal halide ballasts contained in a metal halide lamp fixture covered by this Part shall be marked conspicuously, in color-contrasting ink, with a capital letter ''E'' printed within a circle. Packaging for metal halide lamp fixtures covered by this Part shall also be marked conspicuously with a capital letter ''E'' printed within a circle. For purposes of this section, the encircled capital letter ''E'' will be deemed ''conspicuous,'' in terms of size, if it is as large as either the manufacturer's name or another logo, such as the ''UL,'' ''CBM'' or ''ETL'' logos, whichever is larger, that appears on the metal halide ballast, or the packaging for the metal halide lamp fixture, whichever is applicable for purposes of labeling.

(2) *Product Labeling.* The encircled capital letter ''E'' on metal halide ballasts must appear conspicuously, in color-contrasting ink (*i.e.*, in a color that contrasts with the background on which the encircled capital letter ''E'' is placed) on the surface that is normally labeled. It may be printed on the label that normally appears on the metal halide ballast, printed on a separate label, or stamped indelibly on the surface of the metal halide ballast.

(3) *Package Labeling.* For purposes of labeling under this section, packaging for metal halide lamp fixtures consists of the plastic sheeting, or ''shrink-wrap,'' covering pallet loads of metal halide lamp fixtures as well as any containers in which such metal halide lamp fixtures are marketed individually or in small numbers. The encircled capital letter ''E'' on packages containing metal halide lamp fixtures

must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital letter ''E'' may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads containing metal halide lamp fixtures, the encircled capital letter ''E'' must appear conspicuously, in color-contrasting ink, on the plastic sheeting, unless clear plastic sheeting is used and the encircled capital letter ''E'' is legible underneath this packaging.

■ 8. In paragraph (a)(1) of section 305.19, add the phrase ''metal halide lamp fixtures,'' after the phrase ''fluorescent lamp ballasts,'' and revise paragraph (a)(2) to read as follows:

§ 305.19 Promotional material displayed or distributed at point of sale.

(a) * * *

(2) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a fluorescent lamp ballast or metal halide lamp fixture to which standards are applicable under section 325 of the Act, shall disclose conspicuously in such printed material, in each description of such product, an encircled capital letter ''E''.

* * * * *

■ 9. In paragraph (a) of section 305.20, add the phrase ''metal halide lamp fixtures,'' after the phrase ''fluorescent lamp ballasts,'' and add paragraph (e) to read as follows:

§ 305.20 Paper catalogs and websites.

* * * * *

(e) Any manufacturer, distributor, retailer, or private labeler who advertises metal halide lamp fixtures manufactured on or after January 1, 2009 in a catalog prepared after July 1, 2009, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such metal halide lamp fixture, a capital letter ''E'' printed within a circle.

* * * * *

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E8–15243 Filed 7–8–08: 8:45 am]

BILLING CODE 6750–01–S

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Limited Marketing Activities From a United States Location by Certain Firms and Their Employees or Other Representatives Exempted Under Commodity Futures Trading Commission Regulation 30.10

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is confirming that designated members of the Taiwan Futures Exchange (''TAIFEX'') may engage in limited marketing conduct with respect to foreign futures or options contracts within the U.S. through their employees or representatives consistent with prior Commission orders. This order is issued pursuant to Commission Regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the Regulations set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Special Counsel, Division of Clearing and Intermediary Oversight, at (202) 418–5430 Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *achapin@cftc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Issued Pursuant to Regulation 30.10 Confirming That Designated Members of TAIFEX May Engage in Limited Marketing Conduct With Respect to Foreign Futures and Options Contracts Within the United States Through Their Employees or Other Representatives.

Commission regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.[1] These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction (''Regulation 30.10 relief'').

On October 28, 1992, the Commission issued an order to permit firms that have obtained confirmation of Regulation 30.10 relief to engage in limited marketing conduct with respect to foreign futures or options contracts within the U.S. through their employees or representatives without prior notification to the Commission.[2] The Commission stated that

> the success of the [Regulation] 30.10 program as well as the existence of working relationships established under that program with foreign regulatory and self-regulatory authorities provide assurances that the conduct of [Regulation] 30.10 exempted firms through their employees or other representatives located in the United States, if of a limited duration and subject to proper supervisory controls, will not be inconsistent with the Commission's obligations under the [Commodity Exchange Act] to ensure appropriate customer protection.

[1] Commission regulations referred to herein are found at 17 CFR Ch. I (2007). Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules'' generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10. 52 FR 28990, 29001 (Aug. 5, 1987).

[2] 57 FR 49644 (Nov. 3, 1992).

To provide the appropriate level of customer protection, the relief was limited to conduct directed towards certain institutions and governmental entities as described in Regulation 4.7.[3] In addition, the Commission stated that any person who established a fixed location in the U.S. for the solicitation or acceptance of business, or whose marketing activities involved long or repeated periods within the U.S. that can be characterized as a *de facto* fixed presence, would be disqualified from Regulation 30.10 relief and would be required to register with the Commission. On August 4, 1994, the Commission issued an order expanding the category of persons to whom designated firms may direct limited marketing conduct to include all ''accredited investors,'' as that term is defined in section 230.501(a) of Securities and Exchange Commission Regulation D issued pursuant to the Securities Act of 1933.[4] The orders issued by the Commission in 1992 and 1994 are collectively known as the Limited Marketing Orders.

Pursuant to the terms set forth therein, a foreign regulatory or self-regulatory organization must obtain a written confirmation from the Commission that the Limited Marketing Orders apply to firms in its jurisdiction with confirmed Regulation 30.10 relief. On March 23, 2007, the Commission issued an order granting relief under Regulation 30.10 authorizing designated members of TAIFEX to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on TAIFEX.[5] By letter dated April 16, 2008, counsel for TAIFEX petitioned the Commission to confirm that designated TAIFEX members may engage in limited marketing conduct with respect to foreign futures or options contracts within the U.S. through their employees or other representatives, as set forth in the Limited Marketing Orders.

As previously stated, the Commission believes that certain contacts between firms with confirmed Regulation 30.10 relief and certain sophisticated customers located in the U.S., who have a high degree of sophistication and financial resources, would not be contrary to the public interest. Accordingly, the Commission has determined to issue this order permitting designated TAIFEX members to engage in limited marketing conduct with respect to foreign futures or option contracts within the U.S. through their employees or other representatives, as set forth in the Limited Marketing Orders.

Prior to engaging in any marketing activity in the U.S., a TAIFEX member must obtain confirmation of Regulation 30.10 relief from the National Futures Association (''NFA'').[6] Any TAIFEX member operating pursuant to this order will remain subject to all of the terms and conditions set forth in the Limited Marketing Orders and the TAIFEX Order. In particular, the Commission notes that every order granting Regulation 30.10 relief has required a firm seeking relief under such an order to consent to jurisdiction in the U.S. under the Commodity Exchange Act and file with NFA a valid and binding appointment of an agent in the U.S. for service of process.

Dated: July 3, 2008.

By the Commission

David Stawick,

Secretary of the Commission.

[FR Doc. E8–15606 Filed 7–8–08; 8:45 am]

BILLING CODE 6351–01–P

[3] The order limited the relief to marketing conduct directed towards persons whose description in terms of sophistication and assets was derived generally from the definition of ''qualified eligible participant'' (''QEP''), as defined in Regulation 4.7(a)(1)(ii). In 2000, the Commission streamlined Regulation 4.7 by combining into a single definition those persons formerly defined as QEPs and ''qualified eligible clients'' (''QECs''). As a result of the revision, both QEPs and QECs are termed ''qualified eligible persons.'' 65 FR 47848, 47849–50 (Aug. 4, 2000).

[4] 59 FR 42156 (Aug. 17, 1994).

[5] 72 FR 14413 (Mar. 28, 2007) (''TAIFEX Order'').

[6] The Commission has delegated to NFA certain responsibilities, including the responsibility to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms. 62 FR 47792, 47793 (Sept. 11, 1997).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9412]

RIN 1545–BF06

Election To Expense Certain Refineries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code, and affects taxpayers who own refineries located in the United States. These temporary regulations reflect changes to the law made by the Energy Policy Act of 2005. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 9, 2008.

Applicability Date: For dates of applicability, see § 1.179C–1T(g).

FOR FURTHER INFORMATION CONTACT: Philip Tiegerman (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number (1545–2103). Responses to this collection of information are mandatory.

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.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**.

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

This document contains proposed amendments to 26 CFR part 1 to provide regulations under section 179C of the Internal Revenue Code (Code). Section 179C was added to the Code by section 1323(a) of the Energy Policy Act of 2005, Public Law 109–58 (119 Stat. 594) to encourage the construction of new refineries and the expansion of existing refineries to enhance the nation's refinery capacity.

Section 179C(a) allows a taxpayer to elect to deduct 50 percent of the cost of any qualified refinery property. The remaining 50 percent of the taxpayer's qualifying expenditures are generally recovered under section 168 and section 179B, if applicable. The provisions of section 179C apply to qualified refinery property placed in service by a taxpayer after August 8, 2005, and before January 1, 2012. All costs properly capitalized into qualified refinery property are includable in the cost of the qualified refinery property.

Explanation of Provisions

Scope

The temporary regulations restate the provisions of section 179C and provide guidance on certain issues related to electing and determining the deduction allowable under section 179C(a). Specifically, the temporary regulations provide guidance on making elections under section 179C(a) and (g), and the associated reporting requirements contained in section 179C(h). Further, the temporary regulations provide guidance on determining and substantiating the production capacity requirement, as well as guidance addressing the availability of the deduction in certain sale-leaseback transactions. The temporary regulations generally interpret the statute in a manner consistent with existing statutory and regulatory principles and recognize that taxpayers have had to address section 179C issues for prior tax years in the absence of regulations. While these temporary regulations generally apply to taxable years ending on or after July 9, 2008 and terminate three years after the date they are published in the **Federal Register**, the temporary regulations may be applied by taxpayers to taxable years ending prior to July 9, 2008. These temporary regulations also provide procedures for claiming the section 179C(a) deduction for taxable years ending prior to July 9, 2008.

Property Eligible for the Section 179C Deduction

Under section 179C(c), property must meet several requirements to be considered qualified refinery property eligible for the section 179C(a) deduction. These requirements include the following: (1) The property must be part of a qualified refinery; (2) the original use of the property must commence with the taxpayer; (3) the property must be placed in service within a specified time period; (4) the property must meet certain production capacity requirements; (5) the property must meet all applicable environmental laws; and (6) the property must meet certain construction and written binding contract requirements.

Description of Qualified Refinery

Section 179C(d) provides that a qualified refinery is a refinery located in the United States, whose primary purpose is to process liquid fuel from crude oil or qualified fuels. Section 179C(f) provides that refinery property is ineligible for the section 179C(a) deduction if the primary purpose of the refinery is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or if the refinery property is built solely to comply with consent decrees or projects mandated by Federal, state, or local governments.

Original Use Requirement

Pursuant to the requirements under section 179C(c)(1)(A), the temporary regulations provide that the original use of qualified refinery property must commence with the taxpayer. The temporary regulations define original use as the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer, and provide certain exceptions for taxpayers that engage in certain sale-leaseback transactions.

The temporary regulations provide that if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, those capital expenditures will meet the original use requirement, and may qualify for deduction under section 179C(a). Consistent with the statute, the temporary regulations clarify that reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement and is not qualified refinery property. The question of whether property is reconditioned or rebuilt property is a question of fact.

Consistent with section 179C(c)(2), the temporary regulations also provide an exception to the original use requirement for certain sale-leaseback transactions. If property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer, and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the original use of that property is considered to have commenced with the taxpayer-lessor.

Placed in Service Requirements

Section 179C(c)(1)(B) provides that qualified refinery property is property that is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

Consistent with section 179C(c)(2), the temporary regulations provide that, for certain sale-leaseback transactions, if property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the new property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the sale-leaseback.

Production Capacity Requirements

The production capacity requirement of section 179C(c)(1)(C) and (e) is met if any portion of qualified refinery property: (1) Enables an existing qualified refinery to increase its total volume output, determined without regard to asphalt or lube oil, by 5 percent or more on an average daily basis; or (2) enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased. For example, the average annual output over a number of normal production years may provide a reasonable baseline for measuring an increase in capacity. The temporary regulations confirm that the existing qualified refinery is the refinery prior to the installation of qualified refinery property. The temporary regulations also confirm that the question of whether the qualified refinery property has sufficiently enabled output or throughput increases is properly evaluated as of the placed-in-service date of the qualified refinery property.

Any Applicable Environmental Laws Requirement

Section 179C(c)(1)(D) provides that qualified refinery property must meet all applicable Federal, state, and local environmental laws. However, the environmental compliance requirement applies only with respect to the laws in effect on the date that qualified refinery property is placed in service after August 8, 2005, and before January 1, 2012. Furthermore, a refinery's failure to meet applicable environmental laws with respect to a portion of the refinery

that was in service prior to August 8, 2005 will not disqualify the taxpayer from making the election under section 179C(a) with respect to the otherwise qualifying refinery property.

Section 179C(c)(1)(D) and (c)(3) provides that the property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

Consistent with section 179C(f)(2), the temporary regulations provide that the section 179C(a) election is not available for identifiable refinery property built solely to comply with state, locally or Federally mandated projects or consent decrees. For example, a taxpayer may not elect to expense the cost of a scrubber necessary for the refinery to comply with the Clean Air Act, even if the scrubber is installed as part of a larger project, if the scrubber itself does not otherwise enable an increase in production capacity.

Construction and Written Binding Contract Requirements

Under section 179C(c)(1), qualified refinery property will include otherwise qualified property that is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012, but only if no written binding contract for the construction of the property was in effect on or before June 14, 2005. Pursuant to section 179C(c)(1)(F), a taxpayer must take some action constituting a construction commitment before January 1, 2008. To meet this test, any of the following three acts is sufficient: (1) Entering into a written binding construction contract before January 1, 2008; (2) placing the property in service before January 1, 2008; or (3) in the case of self-constructed property, starting self-construction after June 14, 2005, and before January 1, 2008.

Consistent with existing section 168(k) principles, in the case of self-constructed property, the temporary regulations provide that construction begins when physical work (not including preliminary activities such as planning or designing, securing financing, exploring, or researching) of a significant nature begins. The determination of when work of a significant nature begins depends on the facts and circumstances. *Cf.* Treas. Regs. § 1.168(k)–1(b)(4)(iii)(B). Recognizing that taxpayers have had to make some determinations as to whether self-constructed property could qualify for the section 179C deduction in the absence of regulations, the temporary regulations provide that physical work of a significant nature will be deemed to have begun before January 1, 2008 for purposes of section 179C if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. § 1.168(k)–1(b)(4)(iii)(B)) before October 7, 2008.

Elections

Section 179C provides two elections. The first election is provided under section 179C(a), which allows a taxpayer to elect to deduct an amount equal to 50 percent of the costs paid or incurred by the taxpayer for qualified refinery property in the year the property is placed in service. The election generally must be made by the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. The taxpayer must make the election by entering the deduction claimed at the appropriate place on the taxpayer's Federal income tax return.

A taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under these proposed regulations on an amended return filed by December 31, 2008.

In general, once an election is made under section 179C(a), it may not be revoked except with the written consent of the Commissioner. However, these temporary regulations provide that a taxpayer is deemed to have requested and been granted consent to revoke an election under section 179C(a) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008, or 24 months after the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year for which the election applies. The taxpayer revokes the election by attaching a statement to an amended return for the taxable year for which the election applies. A taxpayer is not permitted to revoke an election under section 179C(a) after the revocation deadline. The revocation deadline may not be extended under § 301.9100–1.

The second election is provided in section 179C(g), which allows a taxpayer that is a subchapter T cooperative (cooperative taxpayer) and that has a subchapter T cooperative as one or more of its owners (cooperative owner(s)) to elect to allocate all or a portion of the deduction allowable under section 179C(a) for the taxable year to the cooperative owner(s). If a cooperative taxpayer makes an election under section 179C(g), the temporary regulations provide that this allocation is equal to the cooperative owner's ratable share of the total amount allocated, determined on the basis of the cooperative owner's ownership interest in the cooperative taxpayer at the beginning of the cooperative taxpayer's taxable year. Under the temporary regulations, the section 179C(g) election must be made by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year for which the section 179C(a) election is made by the cooperative taxpayer. Under the temporary regulations, a cooperative taxpayer is required to make the election under section 179C(g) by attaching a statement to the cooperative taxpayer's Federal income tax return providing the name and taxpayer identification number of the cooperative taxpayer, the amount of the deduction allowable to the cooperative taxpayer, the name and taxpayer identification number of each cooperative owner, and the amount of the deduction allocated to each of the cooperative owner(s). Consistent with section 179C(g)(3), the temporary regulations also require the cooperative taxpayer to notify any cooperative owner in writing, and on Form 1099–PATR, ''Taxable Distributions Received from Cooperatives,'' of the amount of the section 179C(a) deduction that is apportioned to that cooperative owner. The written notice must be provided to the cooperative owner(s) before the due date (including extensions) of the cooperative taxpayer's original Federal income tax return.

Consistent with section 179C(g)(2), once made, an election under section 179C(g) may not be revoked. Consequently, a taxpayer that has made an irrevocable section 179C(g) election may not elect to revoke its section 179C(a) election.

Reporting Requirements

Section 179C(h) provides that any taxpayer making a section 179C(a) election must submit a statement in order to claim the section 179C(a) deduction. The temporary regulations provide that in order to claim the section 179C(a) deduction on a tax return filed after July 23, 2008, the taxpayer must attach the statement to the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. The taxpayer must identify the name and location of the qualified refinery property and provide an affirmation that the

taxpayer's refinery property meets the production capacity requirements of section 179C(e). The taxpayer also must provide the total cost basis of the qualified refinery property and the depreciation treatment of the capitalized portion of the qualified refinery property. If it has not already filed the statement, a taxpayer that has claimed the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, must attach a statement to its next Federal income tax return for each taxable year in which the taxpayer claimed the deduction but did not file a statement.

Effective/Applicability Date

These temporary regulations generally apply to taxable years ending on or after July 9, 2008, and terminate on July 1, 2011. However, the proposed regulations may be relied upon by taxpayers for taxable years ending prior to July 9, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Philip Tiegerman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.179C–1T is added to read as follows:

§ 1.179C–1T Election to expense certain refineries (temporary).

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the deduction allowable under section 179C(a) for the cost of any qualified refinery property. The provisions of this section apply only to a taxpayer that elects to apply section 179C in the manner prescribed under paragraph (d) of this section.

(2) *Definitions.* For purposes of section 179C and this section, the following definitions apply:

(i) *Applicable environmental laws* are any applicable Federal, state, or local environmental laws.

(ii) *Qualified fuels* has the meaning set forth in section 45K(c).

(iii) *Cost* is the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3), but without regard to the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179C and this section) of the property.

(iv) *Throughput* is a volumetric rate measuring the flow of crude oil or qualified fuels processed over a given period of time, typically referenced on the basis of barrels per calendar day.

(v) *Barrels per calendar day* is the amount of fuels that a facility can process under usual operating conditions, expressed in terms of capacity during a 24-hour period and reduced to account for down time and other limitations.

(vi) *United States* has the same meaning as that term is defined in section 7701(a)(9).

(b) *Qualified refinery property*—(1) *In general.* Qualified refinery property is any property that meets the requirements set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Description of qualified refinery property*—(i) *In general.* Property that comprises any portion of a qualified refinery may be qualified refinery property. For purposes of section 179C and this section, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing crude oil or qualified fuels.

(ii) *Nonqualified refinery property.* Refinery property is not qualified refinery property for purposes of this paragraph (b)(2) if—

(A) The primary purpose of the refinery property is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or

(B) The refinery property is built solely to comply with consent decrees or projects mandated by Federal, state or local governments.

(3) *Original use*—(i) *In general.* For purposes of the deduction allowable under section 179C(a), refinery property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer. Except as provided in paragraph (b)(3)(ii) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, only the capital expenditures incurred by the taxpayer to recondition or rebuild the property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), acquired or self-constructed property that contains used parts will be treated as reconditioned or rebuilt only if the cost of the used parts is more than 20 percent of the total cost of the property.

(ii) *Sale-leaseback.* If any new portion of a qualified refinery is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(4) *Placed-in-service date*—(i) *In general.* Refinery property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

(ii) *Sale-leaseback.* If a new portion of refinery property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by

the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(5) *Production capacity*—(i) *In general.* Refinery property is considered qualified refinery property if—

(A) It enables the existing qualified refinery to increase the total volume output, determined without regard to asphalt or lube oil, by at least five percent on an average daily basis; or

(B) It enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis.

(ii) *When production capacity is tested.* The production capacity requirement of this paragraph (b)(5) is determined as of the date the property is placed in service by the taxpayer. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased.

(iii) *Multi-stage projects.* In the case of multi-stage projects, a taxpayer must satisfy the reporting requirements of paragraph (f)(2) of this section, sufficient to establish that the production capacity requirements of this paragraph (b)(5) will be met as a result of the taxpayer's overall plan.

(6) *Applicable environmental laws*—(i) *In general.* The environmental compliance requirement applies only with respect to refinery property, or any portion of refinery property, that is placed in service after August 8, 2005. A refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify a taxpayer from making the election under section 179C(a) with respect to otherwise qualifying refinery property.

(ii) *Waiver under the Clean Air Act.* Refinery property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

(7) *Construction of property*—(i) *In general.* Qualified property will meet the requirements of this paragraph (b)(7) if—

(A) The property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012; and

(B) No written binding contract for the construction of the property was in effect before June 14, 2005.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under state law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or the predecessor of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions, or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding, notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the payment amount and design specification of the property to be purchased have not been specified.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire a component does not satisfy the requirements of this paragraph (b)(7), the component is not qualified refinery property.

(iii) *Self-constructed property*—(A) *In general.* Except as provided in paragraph (b)(7)(iii)(B) of this section, if a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for the production of income by the taxpayer), the construction of property rules in this paragraph (b)(7) are treated as met for qualified refinery property if the taxpayer began manufacturing, constructing, or producing the property after June 14, 2005, and before January 1, 2008. Property that is manufactured, constructed or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(7)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for the production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When construction begins.* For purposes of this paragraph (b)(7)(iii), construction of property generally begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. Nevertheless, physical work of a significant nature will be deemed to have begun for purposes of this paragraph (b)(7)(iii)(B), and the construction of the property will be deemed to have met the requirements of paragraph (b)(7)(iii)(A) of this section, if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. § 1.168(k)–1(b)(4)(iii)(B)) before October 7, 2008.

(C) *Components of self-constructed property*—(*1*) *Acquired components.* If a binding contract (as defined in paragraph (b)(7)(ii) of this section) to acquire a component of self-constructed property is in effect on or before June 14, 2005, the component does not satisfy the requirements of paragraph (b)(7)(i) of this section, and is not qualified refinery property. However, if construction of the self-constructed property begins after June 14, 2005, the self-constructed property may be qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section), even though the component is not qualified refinery property. If the construction of self-constructed property begins before June 14, 2005, neither the self-constructed property nor any component related to the self-constructed property is qualified refinery property. If the component was acquired before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property even if the self-constructed property is not qualified refinery property.

(*2*) *Self-constructed components.* If the manufacture, construction, or production of a component fails to meet any of the requirements of paragraph (b)(7)(iii) of this section, the component is not qualified refinery property. However, if the manufacture, construction, or production of a component fails to meet any of the requirements provided in paragraph (b)(7)(iii) of this section, but the

construction of the self-constructed property begins after June 14, 2005, the self-constructed property may qualify as qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section). If the construction of the self-constructed property begins before June 14, 2005, neither the self-constructed property nor any components related to the self-constructed property are qualified refinery property. If the component was self-constructed before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property, although the self-constructed property is not qualified refinery property.

(c) *Computation of expense deduction for qualified refinery property.* In general, the allowable deduction under paragraph (d) of this section for qualified refinery property is determined by multiplying by 50 percent the cost of the qualified refinery property paid or incurred by the taxpayer.

(d) *Election*—(1) *In general.* A taxpayer may make an election to deduct as an expense 50 percent of the cost of any qualified refinery property. A taxpayer making this election takes the 50 percent deduction for the taxable year in which the qualified refinery property is placed in service.

(2) *Time and manner for making election*—(i) *Time for making election.* An election specified in this paragraph (d) generally must be made not later than the due date (including extensions) for filing the original Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. However, a taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under this paragraph (d) on an amended return filed by December 31, 2008.

(ii) *Manner of making election.* The taxpayer makes an election under section 179C(a) and this paragraph (d) by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section), and attaching a report as specified in paragraph (f) of this section to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section).

(3) *Revocation of election*—(i) *In general.* An election made under section 179C(a) and this paragraph (d), and any specification contained in such election, may not be revoked except with the consent of the Commissioner of Internal Revenue.

(ii) *Revocation prior to the revocation deadline.* A taxpayer is deemed to have requested, and to have been granted, consent of the Commissioner to revoke an election under section 179C(a) and this paragraph (d) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008, or 24 months after the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year for which the election applies. An election under section 179C(a) and this paragraph (d) is revoked by attaching a statement to an amended return for the taxable year for which the election applies. The statement must specify the name and address of the refinery for which the election applies and the amount deducted on the taxpayer's original Federal income tax return for the taxable year for which the election applies.

(iii) *Revocation after the revocation deadline.* An election under section 179C(a) and this paragraph (d) may not be revoked after the revocation deadline. The revocation deadline may not be extended under § 301.9100–1.

(iv) *Revocation by cooperative taxpayer.* A taxpayer that has made an election to allocate the section 179C deduction to cooperative owners under section 179C(g) and paragraph (e) of this section may not revoke its election under section 179C(a).

(e) *Election to allocate section 179C deduction to cooperative owners*—(1) *In general.* If a cooperative taxpayer makes an election under section 179C(g) and this paragraph (e), the cooperative taxpayer may elect to allocate all, some, or none of the deduction allowable under section 179C(a) for that taxable year to the cooperative owner(s). This allocation is equal to the cooperative owner(s)' ratable share of the total amount allocated, determined on the basis of each cooperative owner's ownership interest in the cooperative taxpayer. For purposes of this section, a cooperative taxpayer is an organization to which part I of subchapter T applies, and in which another organization to which part I of subchapter T applies (cooperative owner) directly holds an ownership interest. No deduction shall be allowed under section 1382 for any amount allocated under this paragraph (e).

(2) *Time and manner for making election*—(i) *Time for making election.* A cooperative taxpayer must make the election under section 179(g) and this paragraph (e) by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(ii) *Manner of making election.* An election under this paragraph (e) is made by attaching to the cooperative taxpayer's timely filed Federal income tax return for the taxable year (including extensions) to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies a statement providing the following information:

(A) The name and taxpayer identification number of the cooperative taxpayer.

(B) The amount of the deduction allowable to the cooperative taxpayer for the taxable year to which the election under section 179C(a) and paragraph (d) of this section applies.

(C) The name and taxpayer identification number of each cooperative owner to which the cooperative taxpayer is allocating all or some of the deduction allowable.

(D) The amount of the allowable deduction that is allocated to each cooperative owner listed in paragraph (e)(2)(ii)(C) of this section.

(3) *Written notice to owners.* If any portion of the deduction allowable under section 179C(a) is allocated to a cooperative owner, the cooperative taxpayer must notify the cooperative owner of the amount of the deduction allocated to the cooperative owner in a written notice, and on Form 1099–PATR, ''Taxable Distributions Received from Cooperatives.'' This notice must be provided on or before the due date (including extensions) of the cooperative taxpayer's original Federal income tax return for the taxable year for which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(4) *Irrevocable election.* A section 179C(g) election, once made, is irrevocable.

(f) *Reporting requirement*—(1) *In general.* A taxpayer may not claim a deduction under section 179C(a) for any taxable year unless the taxpayer files a report with the Secretary containing information with respect to the operation of the taxpayer's refineries.

(2) *Information to be included in the report.* The taxpayer must specify—

(i) The name and address of the refinery;

(ii) Under which production capacity requirement under section 179C(e) and paragraph (b)(5)(i)(A) and (B) of this section the taxpayer's qualified refinery qualifies;

(iii) Whether the refinery is qualified refinery property under section 179C(d) and paragraph (b)(2) of this section, sufficient to establish that the primary purpose of the refinery is to process liquid fuel from crude oil or qualified fuels.

(iv) The total cost basis of the qualified refinery property at issue for the taxpayer's current taxable year; and

(v) The depreciation treatment of the capitalized portion of the qualified refinery property.

(3) *Time and manner for submitting report*—(i) *Time for submitting report.* The taxpayer is required to submit the report specified in this paragraph (f) not later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service. A taxpayer that has made a section 179C(a) election for a prior taxable year by claiming the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, but has not already filed a report for that year, must attach a report to its next Federal income tax return for each taxable year the taxpayer claimed the deduction but did not file a report.

(ii) *Manner of submitting report.* The taxpayer must attach the report specified in this paragraph (f) to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(g) *Effective/applicability date.* This section is applicable for taxable years ending on or after July 9, 2008.

(h) *Expiration date.* The applicability of this section expires on or before July 1, 2011.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order 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.
* * * * *	
1.179C–1T	1545–2103
* * * * *	

Approved: July 3, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 08–1423 Filed 7–3–08; 3:33 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0031]

RIN 1625–AA08

Regattas and Marine Parades; Great Lake Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending special local regulations for annual regattas and marine parades in the Captain of the Port Lake Michigan zone. This rule will place restrictions on vessel movement in portions of the Calumet Sag Channel and the Little Calumet River during the annual Southland Regatta. The Southland Regatta is a university rowing race that will be held annually during the first weekend of November. This rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades.

DATES: This rule is effective August 8, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2008–0031 and are available online at *http:www.regulations.gov.* This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Kimber Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI, 414–747–7159. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 6, 2008, we published a notice of proposed rulemaking (NPRM) entitled Regattas and Marine Parades; Great Lake Annual Marine Events in the **Federal Register** (73 FR 6859). We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This rule will add a subpart to 33 CFR Part 100 that will place restrictions on the portions of the Calumet Sag Channel and the Little Calumet River during the annual Southland Regatta. The Southland Regatta is a university rowing race that will be held annually during the first weekend of November.

Discussion of Comments and Changes

One comment was received regarding this rule. The comment endorsed the rule stating that it would enable the Southland Regatta contestants to focus on the competition without the threat of danger, collision, and injury from vessels and recreational boaters on the water before, during, and after the event.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order.

The Coast Guard's use of these special local regulations will be periodic, of short duration, and designed to minimize the impact on navigable waters. These special local regulations will only be enforced immediately before, during, and immediately after the time the marine events occur. Furthermore, these special local

regulations have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the special local regulations. The Coast Guard expects insignificant adverse impact to mariners from the activation of these special local regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the Calumet Sag Channel and the Little Calumet River on the first weekend of November.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: The rule will be in effect for short periods of time and only once per year, is designed to allow traffic to pass safely around the zone whenever possible; and allows vessels to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide 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)(h), of the Instruction, from further environmental documentation.

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 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.910 to read as follows:

§ 100.910 Southland Regatta; Blue Island, IL.

(a) *Regulated Area.* A regulated area is established to include all waters of the Calumet Sag Channel from the South Halstead Street Bridge at 41°39′27″ N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′07″ N, 087°39′38″ W; to the junction of the Calumet Sag Channel. (DATUM: NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Enforcement Period.* This section will be enforced annually on the Saturday immediately prior to the first Sunday of November, from 3 p.m. until 5 p.m. and the first Sunday of November, from 9 a.m. until 5 p.m.

Dated: June 12, 2008.

Peter V. Neffenger,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. E8–15490 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0610]

Special Local Regulations for Marine Events; Port Huron to Mackinac Island Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the Port Huron to Mackinac Island Race, July 12, 2008, at 11 a.m. to July 15, 2008, at 11:59 p.m. This action is necessary to safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander.

DATES: This rule is effective from July 12, 2008, at 11 a.m. through July 15, 2008, at 11:59 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jennings, Jr., Enforcement Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH at (216) 902–6095.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual Port Huron to Mackinac Race July 12, 2008 at 11 a.m. through July 15, 2008 at 11:59 p.m. The Special Local Regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron from:

Latitude	*Longitude*
42[deg]58.8[min] N ..	082[deg]26[min] W, to
42[deg]58.4[min] N ..	082[deg]24.8[min] W, thence
northward along the International Boundary to	
43[deg]02.8[min] N ..	082[deg]23.8[min] W, to
43[deg]02.8[min] N ..	082[deg]26.8[min] W, thence
southward along the U.S. shoreline to	
42[deg]58.9[min] N ..	082[deg]26[min] W, thence to
42[deg]58.8[min] N ..	082[deg] 26[min] W.

In order to ensure the safety of spectators and participating vessels, the special local regulation will be in effect for the duration of the event. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Coast Guard Patrol Commander (PATCOM) and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

In the event this special local regulation affects shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign ''Coast Guard Patrol Commander'' on Channel 16 (156.8 MHZ).

This notice is issued under the authority of 33 CFR Part 100.901 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port or PATCOM determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 24, 2008.

David R. Callahan,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. E8–15491 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 53 and 58

[EPA–HQ–OAR–2006–0735; FRL–8689–2]

RIN 2060–AN83

National Ambient Air Quality Standards for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period on the proposed rule ''National Ambient Air Quality Standards for Lead.'' As initially published in the **Federal Register** on May 20, 2008, written comments on the proposed rule were to be submitted by July 21, 2008. On July 1, 2008, EPA received a court order extending the deadline for signature of the notice of final rulemaking to October

15, 2008 and extending the public comment period on the proposed rule to August 4, 2008.

DATES: Comments must be received by August 4, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0735 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Docket No. EPA–HQ–OAR–2006–0735, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2006–0735, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0735. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information, contact Dr. Deirdre Murphy, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–0729; fax: 919–541–0237; e-mail: *Murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Extension of Public Comment Period

The notice of proposed rulemaking was signed by the Administrator on May 1, 2008 and published in the **Federal Register** on May 20, 2008 (73 FR 29184). The schedule for completion of this review is governed by a judicial order in *Missouri Coalition for the Environment* v. *EPA* (No. 4:04CV00660 ERW, Sept.14, 2005). In light of the numerous complex issues discussed in the notice of proposed rulemaking, EPA and the Missouri Coalition for the Environment jointly sought an amendment of the judicial order to extend the comment period on the notice of proposed rulemaking to August 4, 2008 and to extend the deadline for signature of the notice of final rulemaking to October 15, 2008. On July 1, 2008, the court granted the joint motion, and therefore EPA is extending the comment period until August 4, 2008.

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—the agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Availability of Related Information

A number of documents relevant to this rulemaking, including the notice of proposed rulemaking (73 FR 29184), the advance notice of proposed rulemaking (72 FR 71488), the *Air Quality Criteria for Lead* (Criteria Document) (USEPA, 2006a), the Staff Paper, related risk assessment reports, and other related technical documents are available on EPA(s Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/*

standards/pb/s_pb_index.html. These and other related documents are also available for inspection and copying in the EPA docket identified above.

Dated: July 3, 2008.

Mary Henigen,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E8–15579 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0186, FRL–8569–6]

Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District, Including Nevada County Air Pollution Control District Portion, Plumas County Air Pollution Control District Portion, and Sierra County Air Pollution Control District Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Northern Sierra Air Quality Management District (NSAQMD) portion of the California State Implementation Plan (SIP) portion of the SIP, including the Nevada County Air Pollution Control District (NCAPCD), Plumas County Air Pollution Control district (PCAPCD), and Sierra County Air Pollution Control District (SCAPCD) portions of the SIP. These revisions concern the permitting of air pollution sources. We are approving local and removing local rules under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 8, 2008, without further notice, unless EPA receives adverse comments by August 8, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0186, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *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 below.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date of adoption by the local air agency and submittal by the California Air Resources Board (CARB).

TABLE 1.—RULES SUBMITTED BY THE NSAQMD

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
NSAQMD	501	Permit Required	05/11/94, Amended	10/28/96
NSAQMD	505	Conditional Approval	09/11/91, Adopted	10/28/96
NSAQMD	510	Separation of Emissions	09/11/91, Adopted	10/28/96
NSAQMD	511	Combination of Emissions	09/11/91, Adopted	10/28/96
NSAQMD	512	Circumvention	09/11/91, Adopted	10/28/96
NSAQMD	513	Source Recordkeeping	05/11/94, Amended	10/28/96
NSAQMD	515	Provision of Sampling and Testing Facilities	09/11/91, Adopted	10/28/96
NSAQMD	517	Transfer	09/11/91, Adopted	10/28/96

On December 19, 1996, the submittal of the rules in table 1 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are certain versions of SIP rules from the three individual defunct county air districts, NCAPCD, PCAPCD, and SCAPCD, being superseded by the submitted NSAQMD rules below:

NSAQMD Rule 501, Permit Required, supersedes the following versions:

• PCAPCD Rule 501, Permit Required (submitted on June 22, 1981, approved on June 18, 1982).

• SCAPCD Rule 501, Permit Required (submitted on June 22, 1981, approved on June 18, 1982).

NSAQMD Rule 505, Conditional Approval, supersedes the following versions:

• NCAPCD Section 16, Conditional Approval (submitted on February 21, 1972, approved on May 31, 1972).

• PCAPCD Rule 505, Conditional Approval (submitted on June 22, 1981, approved on June 18, 1982).

• SCAPCD Rule 505, Conditional Approval (submitted on June 22, 1981, approved on June 18, 1982).

NSAQMD Rule 515, Provision of Sampling and Testing Facilities, supersedes the following versions:

• SCAPCD Section 47, Emission Monitoring (submitted on February 21, 1972, approved on May 31, 1972).

• SCAPCD Section 49, Tests (submitted on February 21, 1972, approved on May 31, 1972).

• SCAPCD Section 50, Field Inspection (submitted on February 21, 1972, approved on May 31, 1972).

NSAQMD Rule 517, Transfer, supersedes the following versions:

• PCAPCD Rule 517, Transfer (submitted on June 22, 1981, approved on June 18, 1982).

• SCAPCD Rule 517, Transfer (submitted on June 22, 1981, approved on June 18, 1982).

There are no versions of submitted NSAQMD Rules 510, 511, 512, and 513 in the SIP.

C. What Rules Are Being Removed From the SIP by EPA?

Rules of the individual defunct air districts that we are removing from the SIP are listed in tables 2, 3, and 4. The original dates of submittal by the California Air Resources Board (CARB) and approval by EPA, along with the reason for removal from the SIP, are provided.

TABLE 2.—RULES REMOVED FROM THE NCAPCD SIP BY EPA

Local agency	Rule or section	Rule title	Submitted	Approved by EPA	Reason for removal
NCAPCD	11	Registration Required	02/21/72	05/31/72	(1)
NCAPCD	51	Nuisance	02/21/72	05/31/72	(1)
NCAPCD	106	Validity	04/10/75	06/14/78	(1)
NCAPCD	107	Effective Date	04/10/75	06/14/78	(1)
NCAPCD	201	District-Wide Coverage	04/10/75	06/14/78	(1)
NCAPCD	215	Existing Sources	04/10/75	06/14/78	(1)
NCAPCD	401	Responsibility	04/10/75	06/14/78	(1)
NCAPCD	403	Responsibility of Permitting	04/10/75	06/14/78	(1)

TABLE 3.—RULES REMOVED FROM THE PCAPCD SIP BY EPA

Local agency	Rule or section	Rule title	Submitted	Approved by EPA	Reason for removal
PCAPCD	507	Responsibility	06/22/81	06/18/82	(1)
PCAPCD	508	Posting of Permit to Operate	06/22/81	06/18/82	(3)

TABLE 4.—RULES REMOVED FROM THE SCAPCD SIP BY EPA

Local agency	Rule or section	Rule title	Submitted	Approved by EPA	Reason for removal
SCAPCD	201	District-Wide Coverage	01/10/75	08/22/77	(1)
SCAPCD	205	Nuisance	01/10/75	08/22/77	(2)
SCAPCD	507	Responsibility	06/22/81	06/18/82	(1)
SCAPCD	508	Posting of Permit to Operate	06/22/81	06/18/82	(1)

Notes: Reasons for removal from the SIP of the rules in tables 2, 3, and 4 are as follows:
[1] The rule is not required for the SIP to achieve or maintain attainment.
[2] The rule is not appropriate for EPA to enforce.
[3] The rule is appropriate to be in the SIP, but is not approvable according to current EPA requirements.

D. What Are the Purposes of the Rule Revisions or Rule Removals?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants. The overall purpose of the present actions on NSAQMD permitting rules is to partially consolidate the SIP rules from the original individual air districts, NCAPCD, PCAPCD, and SCAPCD, into one set of SIP rules for the unified NSAQMD.

The SIP rules being removed are from three defunct individual county air districts, NCAPCD, PCAPCD, and SCAPCD, which were unified to form the NSAQMD. These defunct district rules are not appropriate or required for the SIP or were replaced by currently-active NSAQMD SIP rules. The rules listed in tables 2, 3, and 4 are being removed from the SIP by EPA under the authority of section 110(k)(6) of the CAA. The removal of these listed rules does not relax the SIP and does not result in an increase in air emissions.

The purposes of the new submitted rules are as follows:

• *Rule 510:* The rule clarifies that the emissions from multiple emission points in a single source operation may not exceed the limit that would have applied for one emission point for that source.

• *Rule 511:* The rule allows multiple emission sources to be regulated separately if the emissions are combined and if the emissions are susceptible to reliably attributing the amount of

emissions to each individual source. Otherwise, combined multiple emission sources must be regulated with the most stringent regulation for a single emission source.

• *Rule 512:* The rule prohibits circumvention of regulations by superficially reducing or concealing emissions that might violate emission regulations.

• *Rule 513:* The rule requires recordkeeping and reporting with a two-year retention period of those emissions required by the APCO.

The purposes of revisions relative to the SIP rules are as follows:

• *Rule 501:* The requirement that major sources subject to title V comply with federal operating permit regulations is added.

• *Rule 505:* The authority of the Air Pollution Control Officer (APCO) to grant a permit to rent or sell air pollution control equipment is removed.

• *Rule 515:* The requirements for sampling and testing to determine compliance with emission regulations are unified from the defunct district rules.

• *Rule 517:* The requirements for the transfer of ownership of an emission source are unified from the defunct district rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules regulating permitting must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). The revision or removal of SIP rules must not relax existing requirements. The NSAQMD regulates an 8-hour CAA subpart 1 ozone nonattainment area. There are no specific RACT requirements for permitting rules.

The following guidance documents were used for reference:

• *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, EPA, 40 CFR part 51.

• *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region IX (August 21, 2001). (The Little Bluebook)

B. Do the Rule Submittals and Rule Removals Meet the Evaluation Criteria?

We believe the rule approvals and rule removals are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

EPA is approving local NSAQMD Rules 501, 505, 510, 511, 512, 513, 515, and 517 into the SIP and approving the removal of eight NCAPCD, two PCAPCD, and four SCAPCD permitting rules from the SIP. We believe these actions fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approvals and removals without proposing them in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same actions. If we receive adverse comments by August 8, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 8, 2008. This will incorporate the submitted rules in table 1 into the federally-enforceable SIP and remove the rules in tables 2, 3, and 4 from the SIP. Superseded SIP rules for those rules in table 1 are also removed from the SIP. There are no sanctions or FIP clocks associated with any previous action on the rules.

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

III. 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, 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.

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by September 8, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (b)(7)(iii), (c)(26)(ix)(D), (c)(27)(vii)(F), (c)(93)(iii)(E), (c)(93)(iv)(F), (c)(246)(i)(A)(*4*) and (*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(7) * * *

(iii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement Rules 11 and 51.

* * * * *

(c) * * *

(26) * * *

(ix) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(26)(ix)(A) of this section and now deleted without replacement Rules 201 and 205.

* * * * *

(27) * * *

(vii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(27)(vii)(A) of this section and now deleted without replacement Rules 106, 107, 201, 215, 401, and 403.

* * * * *

(93) * * *

(iii) * * *

(E) Previously approved on June 18, 1982 in paragraph (c)(93)(iii)(B) of this section and now deleted without replacement Rules 507 and 508.

(iv) * * *

(F) Previously approved on June 18, 1982 in paragraph (c)(93)(iv)(B) of this section and now deleted without replacement Rules 507 and 508.

* * * * *

(246) * * *

(i) * * *

(A) * * *

(*4*) Rule 505, ''Conditional Approval,'' Rule 510, ''Separation of Emissions,'' Rule 511, ''Combination of Emissions,'' Rule 512, ''Circumvention,'' Rule 515, ''Provision of Sampling and Testing Facilities,'' and Rule 517, ''Transfer,'' adopted on September 11, 1991.

(*5*) Rule 501, ''Permit Required'' and Rule 513, ''Source Recordkeeping,'' amended on May 11, 1994.

* * * * *

[FR Doc. E8–15435 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0416; FRL–8371–9]

Azoxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of azoxystrobin (methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and its Z isomer (methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on animal feed, nongrass, forage, group 18 at 45 parts per million (ppm); animal feed, nongrass, hay, group 18 at 120 ppm; barley, forage at 25 ppm; cotton, gin byproducts at 45 ppm; cotton, undelinted seed at 0.6 ppm; grain, aspirated fractions at 420 ppm; rice, wild, grain at 5.0 ppm; sorghum, forage at 25 ppm; sorghum, grain at 11 ppm; sorghum, stover at 40 ppm; and wheat, forage at 25 ppm. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA is also deleting certain azoxystrobin tolerances that are no longer needed as a result of this action.

DATES: This regulation is effective July 9, 2008. Objections and requests for hearings must be received on or before September 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0416. To access the electronic docket, go to *http://www.regulations.gov*, and search for the docket number. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Bazuin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7381; e-mail address: *bazuin.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0416 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0416, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of September 28, 2007 (72 FR 55204) (FRL–8147–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6F7106 and 7F7198) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27409. Petition PP 6F7106 requested that 40 CFR 180.507(a)(1) be amended by establishing tolerances for combined residues of the fungicide azoxystrobin (methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate in or on barley, forage at 30 ppm; non-grass animal feeds, forage at 35 ppm; non-grass animal feeds, hay at 100 ppm; sorghum, forage at 25 ppm; sorghum, grain at 9 ppm; sorghum, stover at 40 ppm; and wheat, forage at 30 ppm. Petition PP 6F7106 also requested that 40 CFR 180.507(a)(2) be amended by establishing tolerances for residues of the fungicide azoxystrobin in or on cattle, kidney at 1.00 ppm; cattle, liver at 5.10 ppm; cattle, meat byproducts (except liver and kidney) at 0.07 ppm; goat, kidney at 1.00 ppm; goat, liver at 5.10 ppm; goat, meat byproducts (except liver and kidney) at 0.07 ppm; egg, white at 0.01 ppm; egg, yolk at 0.15 ppm; hog, kidney at 0.03 ppm; hog, liver at 0.23 ppm; hog, meat byproducts (except liver and kidney) at 0.01 ppm; horse, kidney at 1.00 ppm; horse, liver at 5.10 ppm; poultry, fat at 0.01 ppm; poultry, liver at 0.12 ppm; poultry, meat at 0.02 ppm; sheep, kidney at 1.00 ppm; sheep, liver at 5.10 ppm; sheep, meat byproducts (except liver and kidney) at 0.07 ppm. Petition PP 6F7106 additionally requested that 40 CFR 180.507(a)(1) be amended by increasing the tolerance for the combined residues of the fungicide azoxystrobin and the Z isomer of azoxystrobin in or on aspirated grain fractions to 112 ppm; increasing the tolerances for the residues of the fungicide azoxystrobin in or on cattle, fat to 0.13 ppm; cattle, meat to 0.07 ppm; goat, fat to 0.13 ppm; goat, meat to 0.07 ppm; hog, fat to 1.10 ppm; horse, meat to 0.07 ppm; milk to 0.05 ppm; sheep, fat to 0.13 ppm; and sheep, meat to 0.07 ppm; and leaving the tolerance for the residues of the fungicide azoxystrobin and the Z isomer of azoxystrobin in or on hog, meat unchanged at 0.01 ppm. Petition PP 7F7198 requested that 40 CFR 180.507(a)(1) be amended by establishing a permanent tolerance for combined residues of the fungicide azoxystrobin and the Z isomer of azoxystrobin in or on rice, wild at 5.0 ppm and by changing the tolerances for combined residues of the fungicide azoxystrobin and the Z isomer of azoxystrobin in or on cotton, gin byproducts to 35 ppm and cotton, undelinted seed to 0.7 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is not modifying the tolerances for ruminant and swine raw agricultural commodities (RACs) or establishing tolerances for poultry RACs. EPA is, however, increasing the proposed tolerance for sorghum grain from 9 ppm to 11 ppm, increasing the proposed tolerance for aspirated grain fractions from 112 ppm to 420 ppm, reducing the proposed tolerances of 30 ppm for both wheat forage and barley forage to 25 ppm, reducing the proposed tolerance for undelinted cotton seed from 0.7 to 0.6 ppm, increasing the proposed tolerance for cotton gin byproducts from 35 to 45 ppm, increasing the proposed tolerance for non-grass animal feeds, forage from 35 to 45 ppm, and increasing the proposed tolerance for non-grass animal feeds, hay from 100 to 120 ppm. EPA is also revoking the two expired time-limited tolerances for safflower, seed at 1.0 ppm; and for Brassica, head and stem, subgroup 5A of 30 ppm in 40 CFR 180.507(b). The rice, wild tolerance in 40 CFR 180.507(b) is also being revoked. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all

other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of azoxystrobin (methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on animal feed, nongrass, forage, group 18 at 45 ppm; animal feed, nongrass, hay, group 18 at 120 ppm; barley, forage at 25 ppm; cotton, gin byproducts at 45 ppm; cotton, undelinted seed at 0.6 ppm; grain, aspirated fractions at 420 ppm; rice, wild, grain at 5.0 ppm; sorghum, forage at 25 ppm; sorghum, grain at 11 ppm; sorghum, stover at 40 ppm; and wheat, forage at 25 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children

Azoxystrobin has low acute toxicity via the oral, dermal and inhalation routes of exposure. Azoxystrobin is not an eye or skin irritant and is not a skin sensitizer. The most common toxicity findings from administration of azoxystrobin to rats, via the oral route, were decreased body weight, decreased food intake/utilization, increased diarrhea, and other clinical toxicity observations such as, increased urinary incontinence, hunched postures and distended abdomens. There were no developmental effects in the rat and rabbit developmental studies. In the reproduction study, decreased body weights and increased adjusted liver weights were observed at the same dose in both offspring and parental animals. In both the acute and subchronic neurotoxicity studies, there were no consistent indications of treatment-related neurotoxicity. There was no evidence of carcinogenicity in rats and mice at acceptable dose levels. Azoxystrobin induced a weak mutagenic response in the mouse lymphoma assay, but the activity expressed in vitro is not expected to be expressed in whole animals.

Specific information on the studies received and the nature of the adverse effects caused by azoxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of September 29, 2000 (65 FR 58404) (FRL–6749–1).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 29, 2000.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to azoxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing azoxystrobin tolerances in (40 CFR 180.507). EPA assessed dietary exposures from azoxystrobin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance level residues, a 100% crop treated assumption, and default processing factors for all existing and proposed uses.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance level residues and default processing factors for all existing and proposed uses. As to percent crop treated, EPA used data on the actual percentage of crop treated for some existing uses and assumed 100% crop treated for all proposed uses, and all other existing uses.

iii. *Cancer*. The Agency has determined that azoxystrobin is not likely to be a human carcinogen, so an exposure assessment to estimate cancer risk is unnecessary.

iv. *Percent crop treated (PCT) information*. EPA did not use anticipated residue information in the dietary assessment for azoxystrobin.

Tolerance level residues were assumed for all food commodities.

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

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

• *Condition* b: The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition* c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Acerola – 100%; almond – 20%; amaranth, leafy – 100%; apricot – 15%; arrowroot – 100%; artichoke, globe – 100%; artichoke, Jerusalem – 100%; arugula – 100%; asparagus – 1%; avocado – 100%; balsam pear – 100%; banana – 100%; barley – 100%; basil – 100%; bean, black – 1%; bean, broad – 1%; bean, cowpea – 1%; bean, great northern – 1%; bean, kidney – 1%; bean, lima – 1%; bean, mung – 1%; bean, navy – 1%; bean, pink – 1%; bean, pinto – 1%; bean, snap – 25%; beet, garden – 15%; beet, sugar – 1%; blackberry – 100%; blueberry – 15%; boysenberry – 100%; Brazil nut – 100%; broccoli – 100%; Brussels sprouts – 100%; burdock – 100%; butternut – 100%; cabbage – 5%; canistel – 100%; cantaloupe – 10%; cardoon – 100%; carrot – 10%; casaba – 100%; cashew – 100%; cassava – 100%; cattle fat, kidney, liver, meat, and meat byproducts – 100%; cauliflower - 100%; celeriac - 100%; celery – 10%; celtuce - 100%; chayote - 100%; cherimoya - 100%; cherry – 5%; chestnut - 100%; chickpea – 1%; chicory - 100%; Chinese waxgourd - 100%; chive – 100%; chrysanthemum, garland - 100%; cinnamon - 100%; citrus citron - 100%; citrus hybrids – 100%; citrus, oil – 100%; collards – 100%; coriander – 100%; corn, field – 100%; corn, pop – 100%; corn, sweet – 10%; cottonseed, oil – 1%; cranberry – 100%; cress, garden – 100%; cress, upland – 100%; cucumber – 15%; currant – 100%; dandelion, leaves – 100%; dasheen, corm – 100%; dasheen, leaves – 100%; dewberry – 100%; dill, seed – 100%; dillweed – 100%; eggplant – 100%; elderberry – 100%; endive – 100%; feijoa – 100%; fennel, Florence – 100%; filbert – 5%; flaxseed, oil – 5%; garlic – 50%; ginger – 100%; ginseng – 100%; goat fat, kidney, liver, meat, and meat byproducts – 100%; gooseberry – 100%; grape – 10%; grapefruit – 20%; guar, seed – 1%; guava – 100%; herbs, other – 100%; hickory nut – 100%; honeydew melon – 5%; hop – 100%; horse, meat – 100%; horseradish – 100%; huckleberry – 100%; jaboticaba – 100%; jackfruit – 100%; kale – 100%; kohlrabi – 100%; kumquat – 100%; leek – 100%; lemon – 100%; lemongrass – 100%; lentil, seed – 1%; lettuce, head – 1%; lettuce, leaf – 1%; lime – 100%; loganberry – 100%; longan – 100%; loquat – 100%; lychee – 100%; macadamia nut – 100%; mango – 100%; marjoram – 100%; milk – 100%; mustard greens – 15%; nectarine – 100%; okra – 100%; onion, dry bulb – 10%; onion, green – 10%; orange – 17%; papaya – 100%; parsley – 30%; parsley, turnip-rooted – 100%; passionfruit – 100%; pawpaw – 100%; pea, succulent – 1%; pea, dry – 1%; pea, edible podded – 25%; pea, pigeon – 1%; peach – 5%; peanut – 10%; pecan – 1%; pepper, bell – 10%; pepper, non-bell – 10%; peppermint – 100%; persimmon – 100%; pistachio – 30%; plantain – 100%; plum – 1%; pork fat, kidney, liver, meat, meat byproducts, and skin – 100%; potato – 25%; pummelo – 100%; pumpkin – 20%; radicchio – 100%; radish – 100%; radish, Oriental – 100%; rape greens – 100%; rapeseed, oil – 5%; raspberry – 100%; rhubarb – 100%; rice – 25%; rutabaga – 100%; safflower – 5%; salsify, roots – 100%; salsify, tops – 100%; sapote, Mamey – 100%; savory – 100%; shallot – 100%; sheep fat, kidney, liver, meat, and meat byproducts – 100%; sorghum – 100%; soursop – 100%; soybean – 1%; Spanish lime – 100%; spearmint – 100%; spices, other – 100%; spinach – 10%; squash, summer – 15%; squash, winter – 15%; starfruit – 100%; strawberry – 20%; sugar apple – 100%; sunflower – 5%; sweet potato – 100%; Swiss chard – 100%; tamarind – 100%; tangerine – 20%; tanier – 100%; tomatillo – 100%; tomato – 20%; turmeric – 100%; turnip, roots – 100%; turnip, greens – 15%; walnut – 1%; watercress – 100%; watermelon – 25%; wheat – 1%; wild rice – 100%; yam, true – 100%; and yam bean – 100%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for azoxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of azoxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) model for surface water and the Screening Concentration in Ground Water (SCI-GROW) model for ground water, the

estimated drinking water concentrations (EDWCs) of azoxystrobin for acute exposures are estimated to be 173 parts per billion (ppb) for surface water and 3.1 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 33 ppb for surface water and 3.1 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 173 ppb for surface water was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 33 ppb for surface water was used to assess the contribution to drinking water.

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

Azoxystrobin is currently registered for the following uses that could result in residential exposures: residential turf grass and ornamentals, as well as indoor surfaces. EPA assessed residential exposure using the following assumptions. Residential handlers may receive short-term dermal and inhalation exposure to azoxystrobin when mixing, loading and applying the formulations. Adults and children may be exposed to azoxystrobin residues from dermal contact with foliage/surfaces during postapplication activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during postapplication activities.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA (Food Quality Protection Act) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The available studies do not indicate any evidence of increased susceptibility and there are no residual uncertainties with regard to prenatal toxicity in rats or rabbits following *in utero* and/or postnatal exposure to azoxystrobin. In the prenatal developmental toxicity studies in rats and rabbits and the 2–generation reproduction study in rats, any observed toxicity to the offspring occurred at equivalent or higher doses than it did to parental animals.

3. *Conclusion*. The Agency has retained the FQPA SF at 3X, for the following reasons:

i. The toxicology data base is complete.

ii. The developmental and reproductive toxicity data do not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

iii. Although a NOAEL was not identified in the study used to derive the aPAD, a 3X (as opposed to a 10X) is adequate to extrapolate a NOAEL due to the low concern for the effect seen taking into account the nature of the effect seen (transient diarrhea) and the overall toxicity of this chemical;

iv. The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities;

v. The chronic dietary exposure analysis for azoxystrobin is a somewhat refined assessment using less than 100% of the crop treated data for selected existing crops (but a 100 PCT value for all new crops);

vi. The exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of azoxystrobin;

vii. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which are not likely to be exceeded; and

viii. The residential postapplication assessment is based upon the residential standard operating procedures. The assessment is based upon surrogate study data. These data are reliable and are not expected to underestimate risk to adults or children. The residential SOPs are based upon reasonable ''worst-case'' assumptions and are not expected to underestimate risk.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water, and does not include dermal, inhalation, or incidental oral exposure. Using these exposure assumptions, EPA has concluded that acute exposure to azoxystrobin will occupy 70% of the aPAD for children 1-2 years old, the population group receiving the greatest exposure, and 25% of the aPAD for the U.S. population as a whole.

2. *Chronic risk*. The chronic aggregate risk assessment takes into account average estimates of exposure to azoxystrobin from consumption in food and drinking water. Using these exposure assumptions, EPA has concluded that chronic exposure to azoxystrobin will utilize 15% of the cPAD for children 1-2 years old, the population group receiving the greatest exposure, and 6% of the cPAD for the U.S. population as a whole.

3. *Short-term risk*. Short-term aggregate exposure takes into account

short-term (1-30 day) residential exposure plus chronic exposure to food and drinking water (considered to be a background exposure level).

Azoxystrobin is currently registered for uses that could result in short-term residential exposure both for adults (because there is a residential handler inhalation exposure scenario) and for toddlers and children (because there is a residual post-application oral exposure scenario). Dermal studies with azoxystrobin identified no toxic endpoints so dermal exposure to azoxystrobin is not expected to pose a short-term risk. The Agency has determined that it is appropriate to aggregate chronic exposure through food and drinking water with short-term residential exposures to azoxystrobin in performing this assessment. High-end estimates of residential exposure are used in the short-term assessment but average (i.e., chronic) exposure values are used for food and drinking water exposure. Toddlers' incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure, and exposure via incidental ingestion of soil.

Using the exposure assumptions described in this unit for short-term exposures, EPA has calculated the following aggregated short-term food, water, and residential exposures and resulting MOEs. For the U.S. population and all assessed subgroups the NOAEL used was 25 milligrams/kilograms/day (mg/kg/day). For the U.S. population the estimated food and drinking water exposure was 0.009878 mg/kg/day, the residential exposure estimate was 0.00011 mg/kg/day, and the aggregate MOE was 2503. For the subgroup children (1-2 years) the estimated food and drinking water exposure was 0.026629 mg/kg/day, the residential exposure estimate was 0.089 mg/kg/day, and the aggregate MOE was 216. For the subgroup youth (13-19 years) the estimated food and drinking water exposure was 0.009499 mg/kg/day, the residential exposure estimate was 0.00011 mg/kg/day, and the aggregate MOE was 2602. For the subgroup females (13-49 years old) the estimated food and drinking water exposure was 0.008081 mg/kg/day, the residential exposure estimate was 0.00011 mg/kg/day, and the aggregate MOE was 3052. None of these MOEs exceeds the Agency's level of concern for azoxystrobin. The level of concern for azoxystrobin is for MOEs below 100.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term (1 to 6 months) residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Azoxystrobin is currently registered for uses that could result in intermediate-term residential oral exposure for toddlers and children, so an exposure assessment was conducted for that scenario. No endpoint has been selected for intermediate-term dermal exposure to azoxystrobin so no dermal assessment was performed. Intermediate-term residential handler scenarios are not expected to occur, so this risk assessment was not conducted for adults. The Agency has determined that it is appropriate to aggregate chronic exposure to azoxystrobin through food and drinking water with intermediate-term residential exposures to azoxystrobin in doing this assessment. High-end estimates of residential exposure are used in the intermediate-term assessment but average (i.e., chronic) exposure values are used for food and drinking water exposure.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures aggregated result in an aggregate MOE for the population subgroup children 1-2 years old of 291, which does not exceed the Agency's level of concern. This value and MOE are derived from a NOAEL for this subgroup of 20 mg/kg/day, an LOC MOE of 100, an estimated average food and drinking water exposure of 0.026629 mg/kg/day, and an estimated oral residential exposure of 0.042 mg/kg/day.

5. *Aggregate cancer risk for U.S. population*.The Agency has determined that azoxystrobin is not likely to be a human carcinogen, and thus azoxystrobin is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

For analysis of plant commodities for residues of azoxystrobin and the Z isomer of azoxystrobin a gas chromatography with nitrogen phosphorus detector (GC/NPD) method (RAM 243/04) has been validated by the Agency, revised, and sent to the Food and Drug Administration (FDA) for inclusion in the Pesticide Analytical Manual (PAM), Volume II. This method is adequate for enforcement of the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No CODEX maximum residue levels (MRLs) have been established for azoxystrobin. No Canadian or Mexican MRLs have been established for azoxystrobin in or on the crops for which tolerances are being established in this document.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA is not modifying the existing tolerances for ruminant and swine raw agricultural commodities (RACs) because a recalculation of the dietary burdens of ruminants and swine indicates that no such changes are necessary, while the proposed kidney and liver tolerances are covered by existing meat byproducts tolerances. EPA is not establishing tolerances for poultry RACs because a recalculation of dietary burdens for poultry continues to indicate that there is no reasonable expectation of finite residues in poultry commodities. EPA is raising the proposed tolerance for sorghum grain from 9 ppm to 11 ppm based on a review of the residue field trial data and EPA's statistical examination of the residue data. The proposed tolerance of 112 ppm in or on aspirated grain fractions is being raised to 420 ppm based on a residue for sorghum grain of 8.46 ppm and a processing factor of 49.4x. EPA is reducing the proposed tolerance of 30 ppm in or on wheat forage to 25 ppm based on a review of the wheat forage field trial data and EPA's statistical examination of the residue data; these data have also been translated to barley, forage with the result that this proposed tolerance is also being reduced from 30 to 25 ppm. A review of the residue data from use on cotton leads EPA to reduce the proposed tolerance for undelinted cotton seed from 0.7 to 0.6 ppm and to increase the proposed tolerance for cotton gin byproducts from 35 to 45 ppm. EPA is also raising the proposed tolerance for non-grass animal feeds, forage from 35 to 45 ppm and the proposed tolerance for non-grass animal feeds, hay from 100 to 120 ppm based on a review of the field trial data for use on alfalfa and clover forage and hay and EPA's statistical examination of the residue data. EPA is also revoking the

time-limited tolerance for Brassica, head and stem, subgroup 5A of 30 ppm, and for safflower, seed at 1.0 ppm, both in 40 CFR 180.507(b), because they expired on December 31, 2006, and June 30, 2008, respectively. Furthermore, Brassica, head and stem, subgroup 5A and safflower, seed have existing tolerances under 40 CFR 180.507(a)(1). The rice, wild time-limited tolerance in 40 CFR 180.507(b) is also being revoked because it is being superceded by a permanent tolerance for rice, wild, grain.

V. Conclusion

Therefore, tolerances are established for combined residues of azoxystrobin (methyl (E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on animal feed, nongrass, forage, group 18 at 45 ppm; animal feed, nongrass, hay, group 18 at 120 ppm; barley, forage at 25 ppm; cotton, gin byproducts at 45 ppm; cotton, undelinted seed at 0.6 ppm; grain, aspirated fractions at 420 ppm; rice, wild, grain at 5.0 ppm; sorghum, forage at 25 ppm; sorghum, grain at 11 ppm; sorghum, stover at 40 ppm; and wheat, forage at 25 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 30, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.507 is amended by:

■ i. Removing the first entry for ''grain, aspirated fractions'' at 10 ppm in paragraph (a)(1).

■ ii. Revising the entries ''cotton, gin byproducts''; ''cotton, undelinted seed''; and ''grain, aspirated fractions.''

■ iii. Alphabetically adding entries to the table in paragraph (a)(1).

■ iv. Removing the text of paragraph (b) and reserving the paragraph designation and heading.

§ 180.507 Azoxystrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Animal feed, nongrass, forage, group 18	45
Animal feed, nongrass, hay, group 18	120
* * * * *	
Barley, forage	25
* * * * *	
Cotton, gin byproducts	45
Cotton, undelinted seed	0.6
* * * * *	
Grain, aspirated fractions	420

Commodity	Parts per million
* * * * *	*
Rice, wild, grain	5.0
* * * * *	*
Sorghum, forage	25
Sorghum, grain	11
Sorghum, stover	40
* * * * *	*
Wheat, forage	25
* * * * *	*

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

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[FR Doc. E8–15517 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0871; FRL–8370–2]

Flumioxazin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flumioxazin in or on corn, field grain; corn, field forage; and corn, field stover. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 9, 2008. Objections and requests for hearings must be received on or before September 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0871. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0871 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0871, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

II. Petition for Tolerance

In the **Federal Register** of September 28, 2007 (72 FR 55204) (FRL–8147–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7243) by Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. The petition requested that 40 CFR 180.568 be amended by establishing tolerances for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on corn, field grain; corn, field forage; and corn, field stover at 0.02 parts per million (ppm). That notice referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of flumioxazin on corn, field grain; corn, field forage; and corn, field stover at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Flumioxazin has mild or no acute toxicity when administered orally, dermally, or by inhalation. It has little or no toxicity with regard to eye irritation or skin irritation and is not a dermal sensitizer. Subchronic and chronic toxicity studies demonstrated that the target organs of flumioxazin are the liver, spleen and cardiovascular system. Developmental effects were observed in developmental rat studies. These effects were fetal cardiovascular anomalies (especially ventricular septal defects). Flumioxazin has been classified as a ''Not Likely Human Carcinogen,'' based on the lack of carcinogenicity in a 2–year rat study, an 18–month mouse study, and a battery of mutagenic studies.

Specific information on the studies received and the nature of the adverse effects caused by flumioxazin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Flumioxazin; Human Health Risk Assessment for the Proposed Food Use on Field Corn,'' at page 39 in docket ID number EPA–HQ–OPP–2007–0871.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for flumioxazin used for human risk assessment can be found at *http://www.regulations.gov* in document ''Flumioxazin; Human Health Risk Assessment for the Proposed Food Use on Field Corn,'' at page 23 in docket ID number EPA–HQ–OPP–2007–0871.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to flumioxazin, EPA considered exposure under the petitioned-for tolerances as well as all existing flumioxazin tolerances in (40 CFR 180.568). EPA assessed dietary exposures from flumioxazin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effect was identified for the general population. However, EPA identified potential acute effects, e.g., cardiovascular effects in offspring, for the population subgroup, females 13

to 49 years. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances (current and proposed) were treated (100% crop treated assumption) and contain tolerance-level residues. Percent crop treated (PCT) and/or anticipated residues were not used in the acute risk assessment.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances (current and proposed) were treated (100 PCT assumption) and contain tolerance-level residues. Percent crop treated (PCT) and/or anticipated residues were not used in the risk assessment.

iii. *Cancer*. The Agency has determined that flumioxazin is ''not likely to be a human carcinogen'' based on the lack of carcinogenicity in a 2–rat study, an 18 month mouse study, and a battery of mutagenic studies. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flumioxazin and its degradates, 482–HA and APF, in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flumioxazin and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of flumioxazin for acute exposures are estimated to be 34 parts per billion (ppb) for surface water and 48 ppb for ground water.

The EDWCs for chronic exposures for non-cancer assessments are estimated to be 18 ppb for surface water and 48 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 48 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 48 ppb was used to assess the contribution to drinking water.

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

Flumioxazin is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The pre-natal and post-natal toxicity database for flumioxazin includes the rat and rabbit developmental toxicity studies and the 2–generation reproduction toxicity study in rats. There is evidence of quantitative susceptibility following oral and dermal exposures to rats. Following *in utero* exposures, developmental effects (cardiovascular anomalies) were seen in the absence of maternal toxicity. There is no evidence (quantitative or qualitative) of susceptibility following *in utero* oral exposure in rabbits. No developmental toxicity was seen at the highest dose tested (3x the Limit-Dose). There is quantitative evidence of susceptibility in the multi-generation reproduction study where effects in offspring were seen at doses lower than those which induced effects in parental animals.

Although increased pre-natal and post-natal quantitative susceptibility was seen in rats, the Agency concluded that there is a low concern and no residual uncertainties for pre-natal and/or post-natal toxicity effects of flumioxazin because:

i. Developmental toxicity (including cardiovascular abnormalities) NOAELs and LOAELs from pre-natal exposure are well characterized after oral and dermal exposure,

ii. The off-spring toxicity NOAEL and LOAEL from post-natal exposure are well characterized,

iii. The dose selected for risk assessment is protective of all potential effects.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for flumioxazin is complete.

ii. There is no indication that flumioxazin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is quantitative evidence of increased susceptibility in the pre-natal developmental studies and post-natal multi-generation study in rats, EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of flumioxazin. The degree of concern for pre-natal and/or post-natal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues for all commodities. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to flumioxazin in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well

as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by flumioxazin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flumioxazin will occupy 8% of the aPAD for (females 13 to 49) the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flumioxazin from food and water will utilize 19% of the cPAD for (Infants less than 1 year old) the population group receiving the greatest exposure. There are no residential uses for flumioxazin.

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

Flumioxazin is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to flumioxazin through food and water and will not be greater than the chronic aggregate risk.

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

Flumioxazin is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to flumioxazin through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Canadian, Mexican or Codex maximum residue levels (MRLs) for residues of flumioxazin in plant commodities subject to this action.

V. Conclusion

Therefore, tolerances are established for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione, in or on corn, field grain; corn, field forage; and corn, field stover at 0.02 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 26, 2008

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.568 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.568 Flumioxazin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Corn, field, forage	0.02
Corn, field, grain	0.02
Corn, field, stover	0.02
* * *	* *

* * * * * *

[FR Doc. E8–15316 Filed 7–8–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0475; FRL–8367–1]

Spirotetramat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of spirotetramat and its metabolites BYI 08330-enol, BYI 08330-ketohydroxy, BYI08330-enol-, and BYI 08330-mono-hydroxy, calculated as spirotetramat equivalents, in or on vegetable, tuberous and corm, subgroup 1C; potato, flakes; onion, bulb, subgroup 3A-07; vegetable, leafy, except brassica, group 4; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; vegetable, fruiting, group 8; vegetable, cucurbit, group 9; fruit, citrus, group 10; citrus, oil; fruit, pome, group 11; fruit, stone, group 12; nut, tree, group 14; almond, hulls; small fruit vine climbing subgroup, except fuzzy kiwifruit, subgroup 13-07F; grape; raisin; strawberry; hop, dried cones; and for the combined residues of spirotetramat and its metabolite BYI 08330-enol, calculated as spirotetramat equivalents, in or on milk; and meat, fat, and meat byproducts of cattle, goat; sheep, and horse. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 9, 2008. Objections and requests for hearings must be received on or before September 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0475. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any

aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0475 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0475, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of July 15, 2007 (FR 40877) (FRL–8137–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7119) by Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 . The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide spirotetramat, (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro [4.5] dec-3-en-4-yl-ethyl carbonate, and its metabolite cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro4.5dec-3-en-2-one, calculated as spirotetramat equivalents, in or on the raw agricultural commodities vegetable, tuberous and corm, subgroup 1C at 1.0 parts per million (ppm); potato, granules/flakes at 2.5 ppm; onions, dry bulb, subgroup 3A at 0.3 ppm; vegetables, leafy, except brassica, group 4 at 5.0 ppm brassica, head and stem, subgroup 5A at 3.0 ppm; brassica, leafy greens, subgroup 5B at 16.0 ppm; vegetables, fruiting, group 8 at 1.0 ppm; tomato, dried pomace at 2.5 ppm; vegetable, cucurbit, group 9 at 0.2 ppm; fruit, citrus, group 10 at 0.5 ppm; citrus, oil at 4.0 ppm; fruit, pome, group 11 at 0.5 ppm; fruit, stone, group 12 at 2.0 ppm; nut, tree, group 14 at 0.5 ppm; almond, hulls at 9.0 ppm; grape at 1.0 ppm; grape, raisin at 2.5 ppm; hop at 10.0 ppm; strawberry at 0.5 ppm; cattle, goat, hog, sheep and horse, meat at 0.01 ppm; cattle, goat, hog, sheep and horse, fat at 0.01 ppm; cattle, goat, hog, sheep and horse, liver at 0.01 ppm; cattle, goat, hog, sheep and horse, meat byproducts, except liver at 0.02 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised tolerance expression for vegetable, tuberous and corm, subgroup 1C; potato, granules/flakes; vegetables, leafy, except brassica, group 4; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; vegetables, fruiting, group 8; tomato, dried pomace; vegetable, cucurbit, group 9; fruit, citrus, group 10; citrus, oil; fruit, pome, group 11; fruit, stone, group 12; nut, tree, group 14; small fruit vine climbing subgroup, except fuzzy kiwifruit, subgroup 13-07F; grape; raisin; strawberry; cattle, goat, hog, sheep and horse, meat; cattle, goat, hog, sheep and horse, fat; cattle, goat, hog, sheep and horse, liver; cattle, goat, hog, sheep and horse, meat byproducts, except liver. A tolerance for milk was also included. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of spirotetramat. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The acute, short-term, and long-term toxicity of spirotetramat is well understood. Spirotetramat technical demonstrated moderate to low acute toxicity via the oral, dermal, and inhalation routes. Spirotetramat is non-irritating to the skin, although it is an irritant to the eyes and exhibits a skin-sensitization potential in animals and humans. The thyroid and thymus glands were target organs in oral subchronic toxicity studies in the dog; whereas, the testes-epididymides were the target organs following subchronic oral treatment of rats. Long-term toxicity studies reflected the short-term toxicological profile of spirotetramat with the thymus and thyroid as target organs following one-year oral exposure of dogs. Chronic exposure of rats to spirotetramat also reflected the subchronic pattern of testicular toxicity. No evidence of tumor formation was found following long-term studies of rodents, and spirotetramat was also negative for mutagenicity and clastogenicity in several standard in vivo and in vitro assays.

The reproductive and developmental toxicity potential of spirotetramat was tested in rats and rabbits. In addition to

testicular histopathology observed following subchronic and chronic exposure of rats to spirotetramat, male reproductive toxicity was recorded in the two-generation reproductive toxicity study. However, development of the sexual organs of offspring (balanopreputial separation, vaginal opening) was unaffected. In an investigative study designed to explore the time of onset of testicular toxicity in rats, decreased epididymal sperm counts were noted after 10 days of exposure. Therefore, repeated dosing with spirotetramat is necessary to produce male reproductive toxicity in rats. Similar effects were observed after repeated dosing with the enol metabolite of spirotetramat. Developmental toxicity was not observed with spirotetramat in the absence of maternal toxicity in either the rat or rabbit.

Specific information on the studies received and the nature of the adverse effects caused by spirotetramat as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Spirotetramat Human Health Risk Assessment for Proposed Uses on Citrus (Crop Group 10); Cucurbit Vegetables (Crop Group 9); Fruiting Vegetables (Crop Group 8); Grape (Crop Subgroup 13F); Hops; Leafy Brassica Vegetables (Crop Group 5); Leafy Non-Brassica Vegetables (Crop Group 4); Pome Fruit (Crop Group 11); Potato and Other Tuberous and Corm Vegetables (Crop Subgroup 1C); Stone Fruit (Crop Group 12); Tree Nuts (Crop Group 14); Onions; Strawberries; Livestock Commodities*; and *Greenhouses/Nurseries*, pages 38–58 in docket ID number EPA–HQ–OPP–2007–0475.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for spirotetramat used for human risk assessment can be found at *http://www.regulations.gov* in document *Spirotetramat Human-Health Risk Assessment for Proposed Uses on Citrus (Crop Group 10); Cucurbit Vegetables (Crop Group 9); Fruiting Vegetables (Crop Group 8); Grape (Crop Subgroup 13F); Hops; Leafy Brassica Vegetables (Crop Group 5); Leafy Non-Brassica Vegetables (Crop Group 4); Pome Fruit (Crop Group 11); Potato and Other Tuberous and Corm Vegetables (Crop Subgroup 1C); Stone Fruit (Crop Group 12); Tree Nuts (Crop Group 14); Onions; Strawberries; Livestock Commodities*; and *Greenhouses/Nurseries*, page 21 in docket ID number EPA–HQ–OPP–2007–0475.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to spirotetramat, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from spirotetramat in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop treated (PCT), and tolerance-level residues for all foods. Empirical and DEEM™ (ver. 7.81) default processing factors were used for processed commodities. Drinking water was incorporated directly in the dietary assessment using the acute concentration for surface water generated by the First Index Resevoir Screening Tool (FIRST) model.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a conservative chronic dietary assessment assuming average field-trial residues, empirical and DEEM™ (ver. 7.81) default processing factors, and 100% CT. Drinking water was incorporated directly into the dietary assessment using the chronic concentration for surface water generated by the FIRST model.

iii. *Cancer*. Spirotetramat was classified as ''not likely to be carcinogenic to humans.'' Therefore, a quantitative cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spirotetramat and its metabolites in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spirotetramat. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the FIRST and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of spirotetramat and its metabolites:

i. For acute exposures are estimated to be 0.212 parts per billion (ppb) for surface water and 3.96×10^{-4} ppb for ground water;

ii. For chronic exposures for non-cancer assessments are estimated to be 1.37×10^{-3} ppb for surface water and 3.96×10^{-4} ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. a. For acute dietary risk assessment, the water concentration value of 0.212 ppb was used to assess the contribution to drinking water. b. For chronic dietary

risk assessment, the water concentration of value 1.37x10-^{3} ppb was used to assess the contribution to drinking water.

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

Spirotetramat is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat or rabbit to prenatal or postnatal exposure to spirotetramat. In the rat developmental toxicity study, toxicity to offspring was observed at the same dose as maternal toxicity, which was also the limit dose. In the developmental toxicity study in the rabbit, only maternal toxicity was observed. In both reproductive toxicity studies, toxicity to offspring (decreased body weight) was observed at the same dose as parental toxicity. Therefore, no evidence of increased susceptibility of offspring was found across four relevant toxicity studies with spirotetramat.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for spirotetramat is complete.

ii. There is no indication that spirotetramat is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Clinical signs of toxicity and decreased motor activity were observed in adult rats following a single dose of spirotetramat in the acute neurotoxicity study in the rat; however, these effects only attained statistical significance at high doses and were not observed at the limit dose in the acute oral toxicity study in the rat. There is no concern for neurotoxicity with spirotetramat in the developing animal based on the fact that brain dilation in the one-year dog study is most likely a congenital anomaly that was not observed in any other study in the spirotetramat database, and the fact that the structurally related compounds spirodiclofen and spiromesifen are not neurotoxic in adults or young.

iii. There is no evidence that spirotetramat results in increased susceptibility *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to spirotetramat in drinking water. These assessments will not underestimate the exposure and risks posed by spirotetramat.

v. There are no registered or proposed uses of spirotetramat which could result in residential exposure.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to spirotetramat will occupy 10% of the aPAD for (children 1-2 years old) the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spirotetramat from food and water will utilize 77% of the cPAD for (children 1-2 years old) the population group receiving the greatest exposure. There are no residential uses for spirotetramat.

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

Spirotetramat is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to spirotetramat through food and water and will not be greater than the chronic aggregate risk.

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

Spirotetramat is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to spirotetramat through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*.Spirotetramat has been classified as ''Not Likely to be Carcinogenic to Humans.'' Spirotetramat is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that

no harm will result to the general population, or to infants and children from aggregate exposure to spirotetramat residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

If the method is not published in the Pesticide Analytical Manual, but has been approved by EPA, use the following:

Adequate enforcement methodology liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX or Mexican maximum residue limits (MRLs) for spirotetramat. Canadian MRLs have been established and are harmonized with the US.

C. Response to Comments

There were no comments received in response to the notice of filing.

D. Revisions to Petitioned-For Tolerances

Based on residue chemistry data submitted with this petition, several petitioned-for tolerances were revised, and it was considered necessary to establish a tolerance for milk. A chart listing the petitioned-for tolerances and EPA recommended tolerances can be found at *http://www.regulations.gov* in document *Spirotetramat Human Health Risk* Assessment for Proposed Uses on Citrus (Crop Group 10); Cucurbit Vegetables (Crop Group 9); Fruiting Vegetables (Crop Group 8); Grape (Crop Subgroup 13F); Hops; Leafy Brassica Vegetables (Crop Group 5); Leafy Non-Brassica Vegetables (Crop Group 4); Pome Fruit (Crop Group 11); Potato and Other Tuberous and Corm Vegetables (Crop Subgroup 1C); Stone Fruit (Crop Group 12); Tree Nuts (Crop Group 14); Onions; Strawberries; Livestock Commodities; and *Greenhouses/ Nurseries* page 65 in docket ID number EPA–HQ–OPP–2007–0475.

V. Conclusion

Therefore, tolerances are established for combined residues of spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro [4.5] dec-3-en-4-yl-ethyl carbonate]) and its metabolites BYI 08330-enol (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro 4.5 dec-3-en-2-one), BYI 08330-ketohydroxy (cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro 4.5 decane-2,4-dione), BYI08330-enol-Glc (cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro 4.5 dec-3-en-4-yl beta-D-glucopyranoside), and BYI 08330-mono-hydroxy (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro 4.5 decan-2-one), calculated as spirotetramat equivalents, in or on the following commodities: Fruit, citrus, group 10 at 0.60 ppm; citrus, oil at 6.0 ppm; vegetable, leafy, except brassica, group 4 at 9.0 ppm; fruit, pome, group 11 at 0.70 ppm; fruit, stone, group 12 at 4.5 ppm; small fruit vine climbing subgroup, except fuzzy kiwifruit, subgroup 13-07F at 1.3 ppm; grape, raisin at 3.0 ppm; strawberry at 0.40 ppm; onion, bulb, subgroup 3A-07 at 0.30 ppm; vegetable, fruiting, group 8 at 2.5 ppm; vegetable, cucurbit, group 9 at 0.30 ppm; brassica, head and stem, subgroup 5A at 2.5 ppm; brassica, leafy greens, subgroup 5B at 8.0 ppm; vegetable, tuberous and corm, subgroup 1C at 0.60 ppm; potato, flakes at 1.6 ppm; nut, tree, group 14 at 0.25 ppm; almond, hulls at 9.0 ppm; hop, dried cones at 10 ppm. Tolerances are also established for the combined residues of spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro 4.5 dec-3-en-4-yl-ethyl carbonate) and its metabolite BYI 08330-enol (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro 4.5 dec-3-en-2-one), calculated as spirotetramat equivalents, in/on the following livestock commodities: Milk at 0.01 ppm; cattle, meat at 0.02 ppm; cattle, fat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat at 0.02 ppm; goat, fat at 0.02 ppm; goat, meat byproducts at 0.02 ppm; sheep, meat at 0.02 ppm; sheep, fat at 0.02 ppm; sheep, meat byproducts at 0.02 ppm; horse, meat at 0.02 ppm; horse, fat at 0.02 ppm; horse, meat byproducts at 0.02 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 24, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.641 is added to read as follows:

§ 180.641 Spirotetramat; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro [4.5] dec-3-en-4-yl-ethyl carbonate) and its metabolites BYI 08330-enol (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro 4.5 dec-3-en-2-one), BYI 08330-ketohydroxy (cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro 4.5 decane-2,4-dione), BYI08330-enol-Glc (cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro 4.5 dec-3-en-4-yl beta-D-glucopyranoside), and BYI 08330-monohydroxy (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro 4.5 decan-2-one), calculated as spirotetramat equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond, hulls	9.0
Brassica, head and stem, subgroup 5A	2.5
Brassica, leafy, subgroup 5B	8.0
Citrus, oil	6.0
Fruit, citrus, group 10	0.60
Fruit, pome, group 11	0.70
Fruit, stone, group 12	4.5
Grape, raisin	3.0
Hop, dried cones	10.0
Nut, tree, group 14	0.25
Onion, bulb, subgroup 3A-07	0.3
Potato, flakes	1.6
Small fruit vine climbing subgroup, except fuzzy kiwifruit, subgroup 13-07F	1.3
Strawberry	0.40
Vegetable, cucurbit, group 9	0.30
Vegetable, fruiting, group 8	2.5
Vegetable, leafy, except Brassica, group 4	9.0
Vegetable, tuberous and corm, subgroup 1C	0.60

(2) Tolerances are also established for the combined residues of spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro [4.5] dec-3-en-4-yl-ethyl carbonate) and its metabolite BYI 08330-enol (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro 4.5 dec-3-en-2-one), calculated as spirotetramat equivalents, in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Goat, fat	0.02
Goat, meat	0.02
Goat, meat byproducts	0.02
Horse, fat	0.02
Horse, meat	0.02
Horse, meat byproducts	0.02
Milk	0.01
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Resereved]

(d) Indirect or inadvertant residues. [Reserved]

[FR Doc. E8–15521 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0893; FRL–8370–9]

Sethoxydim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety, in or on various oilseed commodities. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 9, 2008. Objections and requests for hearings must be received on or before September 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0893. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0893 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0893, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of September 28, 2007 (72 FR 55204) (FRL–8147–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7232) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.412 be amended by establishing tolerances for combined residues of the herbicide sethoxydim, 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on cuphea, seed at 35.0 parts per million (ppm); echium, seed at 35.0 ppm; gold of pleasure, seed at 35.0 ppm; gold of pleasure, meal at 40.0 ppm; hare's ear mustard, seed at 35.0 ppm; lesquerella, seed at 35.0 ppm; lunaria, seed at 35.0 ppm; meadowfoam, seed at 35.0 ppm; milkweed, seed at 35.0 ppm; mustard, seed at 35.0 ppm; oil radish, seed at 35.0 ppm; poppy, seed at 35.0 ppm; sesame, seed at 35.0 ppm; sweet rocket, seed at 35.0 ppm; crambe, seed at 35.0 ppm; and crambe, meal at 40.0 ppm. That notice referenced a summary of the petition prepared by BASF, the registrant, on behalf of IR–4, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety on crambe, meal at 40.0 ppm; crambe, seed at 35.0 ppm; cuphea, seed at 35.0 ppm; echium, seed at 35.0 ppm; gold of pleasure, meal at 40.0 ppm; gold of pleasure, seed at 35.0 ppm; hare's ear mustard, seed at 35.0 ppm; lesquerella, seed at 35.0 ppm; lunaria, seed at 35.0 ppm; meadowfoam, seed at 35.0 ppm; milkweed, seed at 35.0 ppm; mustard, seed at 35.0 ppm; oil radish, seed at 35.0 ppm; poppy, seed at 35.0 ppm; sesame, seed at 35.0 ppm; and sweet rocket, seed at 35.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The acute toxicity data indicate that sethoxydim is minimally toxic via oral, dermal and inhalation routes of exposure. It is neither irritating to the eye nor the skin. With repeated dosing, the primary target organ for this chemical is the liver. In the chronic toxicity study in dogs, there were significantly increased absolute and

relative liver weights accompanied by supportive clinical chemistry and histopathology. Dose-related clinical chemistry abnormalities were observed in both sexes and included increased alkaline phosphatase and aspartate aminotransferase (ALT) and decreased albumin and cholesterol synthesis. Dose-related histopathologic lesions were found in the liver, spleen and bone marrow. A mild hepatocellular cytoplasmic alteration was found in males at all doses and in females at the mid and high doses. Adverse liver effects were also observed via the oral route in mice and via the inhalation route in rats. There was no evidence of carcinogenicity in studies in rats and mice and no evidence of mutagencity, immunotoxicity or endocrine disruption in the toxicity database for sethoxydim. In the prenatal developmental studies in rats and rabbits and reproductive toxicity study in rats, the primary effects noted in the young were fetal skeletal variations and decreases in body weight. Although effects suggestive of neurotoxicity were noted in adult and young rats in the developmental and/or reproductive toxicity studies, EPA has concluded that sethoxydim is not a neurotoxic chemical. The weight of evidence EPA considered in making this determination is discussed in more detail in Unit III.D.3.ii.

Specific information on the studies received and the nature of the toxic effects caused by sethoxydim as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55858) (FRL–7238–6)(*http://www.epa.gov/EPA-PEST/2003/September/Day–29/p24562.htm*).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for sethoxydim used for human risk assessment can be found at *http://www.regulations.gov* in the document *Sethoxydim: Amended human health risk assessment to support uses on the Rapeseed Crop Subgroup 20A* at page 10 in docket ID number EPA–HQ–OPP–2007–0893.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to sethoxydim, EPA considered exposure under the petitioned-for tolerances as well as all existing sethoxydim tolerances in 40 CFR 180.412. EPA assessed dietary exposures from sethoxydim in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that 100 percent of all crops with existing or pending tolerances are treated with sethoxydim and contain tolerance-level residues.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that 100 percent of all crops with existing or pending tolerances are treated with sethoxydim and contain tolerance-level residues.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified sethoxydim as ''not likely to be carcinogenic to humans''; therefore, an exposure assessment for evaluating cancer risk is not needed for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for sethoxydim. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sethoxydim in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sethoxydim. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of sethoxydim for acute exposures are estimated to be 130 parts per billion (ppb) for surface water and 1.5 ppb for ground water; and for chronic exposures for non-cancer assessments are estimated to be 16 ppb for surface water and 1.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 130 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 16 ppb was used to assess the contribution to drinking water.

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

Sethoxydim is currently registered for the following uses that could result in residential exposures: Ornamentals and flowering plants, recreational areas, and buildings/structures (outdoor). EPA assessed residential handler and

postapplication exposures using the following assumptions:

Homeowners who apply sethoxydim to ornamental gardens and turf may be exposed for short-term durations via the dermal and inhalation routes. Dermal endpoints of concern were not identified for sethoxydim; therefore, dermal exposure and risk assessments are not appropriate. Short-term inhalation exposure was assessed for residential handlers who mix, load and apply liquid sethoxydim products using low-pressure hand wands, backpack sprayers and garden hose-end sprayers.

Sethoxydim can be used in areas, such as home lawns, that may be frequented by adults and children. There is potential for dermal exposure of adults and children as well as incidental oral exposure of children following application of sethoxydim to such areas. Post-application inhalation exposure of adults and children is expected to be negligible. Since there are no dermal endpoints of concern for sethoxydim, only post-application incidental oral exposure of children was assessed. EPA assessed incidental oral exposure of toddlers from hand-to-mouth, object-to-mouth and incidental soil ingestion activities using Standard Operating Procedures for Residential Exposure Assessments.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for sethoxydim includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility of *in utero* rabbit fetuses following exposure to sethoxydim in the rabbit developmental study; however, evidence of increased susceptibility was noted in the rat developmental and reproduction toxicity studies as described below:

There was some evidence of qualitative susceptibility in the rat developmental study with the occurrence of more severe effects in the fetuses (delayed ossification and tail abnormalities) than in the maternal animals (transient clinical signs including: Irregular gait and decreased activity) at the same dose. The degree of concern for increased susceptibility in this study is low and there are no residual uncertainties for the following reasons: The effects in the pups were of low incidence and only observed at a high dose that is considered to be close to a limit dose. In addition, these effects were seen in the presence of clear maternal toxicity and clear NOAELs and LOAELs were established for both maternal and developmental toxicities.

In the 2–generation reproduction study in rats, pups showed decreases in body weight (11 to 13%) during lactation at the high dose. At the same dose, adult female animals exhibited body weight losses (8 to 10%) that are considered too small to qualify as an adverse effect. The determination that body weight effects occurred in pups at a dose that did not result in maternal toxicity is technically an indication of quantitative susceptibility. However, the degree of concern for the body weight changes in pups is low, since the weight changes are considered minimal and the differences observed in body weight losses between the adult and young animals are marginal. Characterization of the body weight changes as an adverse effect in the pups is considered conservative (protective).

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for sethoxydim is complete.

ii. Sethoxydim is not considered to be a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Clinical signs suggestive of neurotoxicity (including irregular gait, decreased activity, excessive salivation, and anogenital staining) were observed in adult rats in the developmental toxicity study. Because the clinical signs occurred shortly after dosing, only occurred at very high treatment doses (over one half the limit dose) and were transitory, it is unlikely that the signs observed are the result of a primary systemic effect on the nervous system but, rather, are reflective of the general toxicity at a high dose. An increased incidence of fetal skeletal variations due to delayed ossification was seen in young rats in the developmental and reproductive toxicity studies. In the rat prenatal study, tail abnormalities (filamentous tail or lack of a tail) were noted. These abnormalities were observed at a very low incidence and at high treatment doses. In the 2–generation reproduction study in rats, a tail anomaly (short, thread-like tail, no anal opening, hindlimbs curved toward central midline) was found in one pup in the F2b generation (1/344 total pups; in 1/4 litters). Tail abnormalities are sometimes thought to relate to central nervous system (CNS) malformations; however, in this case, these tail abnormalities are not likely to be the result of a primary neural tube effect. In the rat prenatal study, there is no description of any effect on neural tube-derived structures. No other effects suggestive of neurotoxicity were seen in toxicology studies conducted with sethoxydim. Furthermore, cyclohexones, the class of compounds that includes sethoxydim, are not known to cause neurotoxicity or developmental malformations of the nervous system. Based on the weight of the evidence, EPA concluded that sethoxydim is not neurotoxic.

iii. There is no evidence that sethoxydim results in increased susceptibility in *in utero* rabbits in the prenatal developmental study. Although there is qualitative evidence of increased susceptibility in the prenatal developmental study in rats and equivocal evidence of quantitative susceptibility in the 2–generation

reproduction study in rats, the degree of concern is low, and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of sethoxydim.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to sethoxydim in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by sethoxydim.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sethoxydim will occupy 17% of the aPAD for children, 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sethoxydim from food and water will utilize 94% of the cPAD for children, 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of sethoxydim is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Sethoxydim is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to sethoxydim, except residential inhalation exposures. It is not appropriate to aggregate dietary (i.e., oral) exposures and inhalation exposures because the toxic effects identified for the oral and inhalation exposure pathways differ.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in an aggregate MOE of 1,300 for children 1 to 2 years old (toddlers). The aggregate MOE for children includes food, drinking water and post-application incidental oral exposures from entering turf areas previously treated with sethoxydim. Adult residential handler MOEs, based on inhalation exposure of adults who mix, load and apply liquid sethoxydim products using low-pressure hand wands, backpack sprayers or garden hose-end sprayers, range from 1.4×10^6 to 1.6×10^6, with hose-end sprayers resulting in the lowest MOE. As noted in the previous paragraph, it is not appropriate to aggregate chronic exposure from food and water with inhalation exposures. Post-application inhalation exposure of adults and children is expected to be negligible.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Sethoxydim is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to sethoxydim through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. EPA has classified sethoxydim into the category ''Not Likely to be Carcinogenic to Humans.'' Sethoxydim is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with flame photometric detection in the sulfur mode; BASF Wyandotte Corporation's Method No. 30; 3/15/82; MRID 44864501; Method I, Pesticide Analytical Methods Vol. II) is available to enforce these oilseed tolerances.

B. International Residue Limits

There are no CODEX, Canadian or Mexican maximum residue limits (MRLs) established on the commodities associated with this petition.

V. Conclusion

Therefore, tolerances are established for combined residues of sethoxydim, 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, and its metabolites containing the 2-cyclohexen-1-one moiety, in or on crambe, meal at 40.0 ppm; crambe, seed at 35.0 ppm; cuphea, seed at 35.0 ppm; echium, seed at 35.0 ppm; gold of pleasure, meal at 40.0 ppm; gold of pleasure, seed at 35.0 ppm; hare's ear mustard, seed at 35.0 ppm; lesquerella, seed at 35.0 ppm; lunaria, seed at 35.0 ppm; meadowfoam, seed at 35.0 ppm; milkweed, seed at 35.0 ppm; mustard, seed at 35.0 ppm; oil radish, seed at 35.0 ppm; poppy, seed at 35.0 ppm; sesame, seed at 35.0 ppm; and sweet rocket, seed at 35.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to*

Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 30, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.412 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Crambe, meal	40.0
Crambe, seed	35.0
* * *	* *
Cuphea, seed	35.0
* * *	* *
Echium, seed	35.0
* * *	* *
Gold of pleasure, meal	40.0
Gold of pleasure, seed	35.0
* * *	* *
Hare's ear mustard, seed	35.0
* * *	* *
Lesquerella, seed	35.0
* * *	* *
Lunaria, seed	35.0
Meadowfoam, seed	35.0
* * *	* *
Milkweed, seed	35.0
Mustard, seed	35.0
* * *	* *
Oil radish, seed	35.0
* * *	* *
Poppy, seed	35.0
* * *	* *
Sesame, seed	35.0
* * *	* *
Sweet rocket, seed	35.0
* * *	* *

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[FR Doc. E8–15519 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0096; FRL–8372–6]

Gamma-cyhalothrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of Gamma-cyhalothrin in or on all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed or prepared, pistachio and okra. Pytech Chemicals GmbH and Interregional Research Project No. 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 9, 2008. Objections and requests for hearings must be received on or before September 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0096. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.),

2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: BeWanda Alexander, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7460; e-mail address: *alexander.bewanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0096 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0096, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Registers** of February 28, 2007 (72 FR 9000) (FRL–8115–5) and February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6H7114) by Pytech Chemicals GmbH, 9330 Zionsville Road, Indianapolis, IN 46268 and PP 7E7287 by IR-4, 500 College Road East, Suite 201 W. Princeton, NJ 08540–6635 respectively. The petitions requested that 40 CFR 180.438 be amended by establishing tolerances for residues of the insecticide gamma-cyhalothrin, (S)-alpha-cyano-3-phenoxybenzy-(Z)-(1R, 3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl-2,2-dimethycyclopropanecarboxylate, in all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed or prepared, at 0.01 parts per million (ppm), pistachio at 0.05 ppm, and okra at 0.20 ppm. These notices referenced a summary of the petitions prepared by Dow Agro Sciences (on behalf of Pytech Chemicals), which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

The tolerance expression under 40 CFR 180.438(a)(3) currently identifies the tolerance as a ''food additive'' and also lists specific instructions for use in food handling establishments under paragraphs, 180.438(a)(3)(ii) thru (v). The term ''food additive tolerance'' is obsolete since EPA no longer regulates pesticide residues under section 409 of the Federal Food Drug and Cosmetic Act. In addition it is no longer necessary to identify specific instructions for use in food handling establishments since these instructions are identified on the pesticide label. Therefore EPA is revising the tolerance expression under 40 CFR 180.438(a)(3) to read, ''A tolerance of 0.01 part per million is established for residues of the insecticide lambda-cyhalothrin and an isomer gamma-cyhalothrin as follows:'', and is deleting sections 180.438(a)(3)(ii) thru (v).

III. Aggregate Risk Assessment and Determination of Safety

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

of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of gamma-cyhalothrin on all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed or prepared, at 0.01 ppm, pistachio at 0.05 ppm, and okra at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

Gamma-cyhalothrin is a single, resolved isomer of the pyrethroid insecticide cyhalothrin. As such, it shares physical, chemical and biological properties with both cyhalothrin and lambda-cyhalothrin, which are mixtures of 4 and 2 isomers, respectively. Gamma-cyhalothrin is the most insecticidally active isomer of cyhalothrin/lambda-cyhalothrin, and thus the gamma-cyhalothrin technical product is considered a refined form of cyhalothrin/lambda-cyhalothrin that has been purified by removal of less-active and inactive isomers. Therefore, similar levels of insecticidal efficacy for gamma-cyhalothrin can be obtained with significantly reduced application rates as compared with either cyhalothrin or lambda-cyhalothrin. EPA has previously concluded that residue data supporting registered uses of lambda-cyhalothrin are sufficient to support registration of gamma-cyhalothrin for the same uses, as long as the use rates of gamma-cyhalothrin are no greater than half the corresponding use rates of lambda-cyhalthrin. The proposed application rates of gamma-cyhalthrin for the requested new uses (considered herein) are no greater than half of the corresponding, existing application rates for similar registered uses of lambda-cyhalthrin.

Tolerances are currently established under 40 CFR 180.438 for residues of lambda-cyhalothrin in food-handling establishments.Through the use of bridging data, the toxicology database for gamma-cyhalothrin is complete using developmental, reproduction, chronic (rodent), and oncogenicity studies conducted with cyhalothrin and lambda-cyhalothrin. The nature of the toxic effects caused by lambda-cyhalothrin as well as gamma-cyhalthrin are discussed in detail in the **Federal Register** of September 27, 2002 (67 FR 60902)(FRL–7200–1). Therefore the toxicology database for gamma-cyhalothrin when bridged with cyhalothrin and lambda-cyhalothrin are complete for purposes of supporting the proposed use in food handling establishments.

In the August 15, 2007 final rule, establishing tolerances for lambda-cyhalothrin on a number of crops including pistachios. EPA included residuesat the tolerance level 0.05 ppm in assessing the use of lambda-cyhalothrin in/on pistachios. Since EPA considered the pistachio use in this most recent risk assessment establishing the tolerance on pistachios for gamma-cyhalothrin will not change the estimated aggregate risks resulting from use of lambda-cyhalothrin as discussed in the August 15, 2007 (72 FR 45656) **Federal Register**. Refer to this **Federal Register** document available at *http://www.regulations.gov* for a detailed discussion of the aggregate risk assessments and determination of safety.

A tolerance for residues of lambda-cyhalothrin in okra has not been established; however, there are adequate residue data for lambda-cyhalothrin on fruiting vegetables (crop group 8) to support a tolerance for residues of gamma-cyhalothrin in okra; and EPA included residues on okra at the fruiting vegetable tolerance level (0.20 ppm) in the risk assessments supporting the August 15, 2007 final rule discussed in the previous paragraph. Since EPA considered the okra use in this most recent assessment establishing the tolerance on okra for gamma-cyhalothrin will not change the aggregate risks resulting from use of lambda-cyhalothrin as discussed in the August 15, 2007 (72 FR 45656) **Federal Register**. Refer to this **Federal Register** document available at *http://www.regulations.gov* for a detailed discussion of the aggregate risk assessments and determination of safety.

EPA concludes that the previous risk assessments on lambda-cyhalothrin sufficiently covers the proposed gamma-cyhalothrin uses and no new aggregate risk assessment is needed for gamma-cyhalothrin. Based on the risk assessments discussed in the final rule published in the **Federal Register** August 15, 2007 (72 FR 45656, FRL 8143–1) EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to gamma-cyhalothrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, gas chromatography/electron capture detector (GC/ECD), (ICI Method 81 (PRAM 81)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established Mexican, Canadian, or Codex MRLs (maximum residue limits) for gamma-cyhalothrin.

V. Conclusion

Therefore, tolerances are established for residues of gamma-cyhalothrin, (S)-alpha-cyano-3-phenoxybenzy-(Z)-(1R, 3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl-2,2-dimethycyclopropanecarboxylate, in or on all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed or prepared, at 0.01 ppm, pistachio at 0.05 ppm, and okra at 0.20 ppm.

VI. Statutory and Executive Order Reviews

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

Populations (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 30, 2008.

Lois Rossi,

Direction, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.438 is amended by:

■ i. Alphabetically adding okra and pistachios to the table in paragraph (a)(2).

■ ii. Revising paragraph (a)(3).

The amendments read as follows:

§ 180.438 Lamba-cyhalothrin and an isomer gamma-cyhalothrin; tolerances for residues.

(a) * * * * *

(2) * * *

Commodity	Parts per million
* * * * *	*
Okra	0.20
* * * * *	*
Pistachio	0.05
* * * * *	*

(3) A tolerance of 0.01 part per million is established for residues of the insecticide lamba-cyhalothrin and an isomer gamma-cyhalothrin in or on all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed, or prepared.

* * * * *

[FR Doc. E8–15518 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0571; FRL–8372–2]

Ammonium Soap Salts of Higher Fatty Acids (C_8–C_{18} saturated; C_8–C_{12}) unsaturated; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the ammonium soap salts of higher fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) in or on all food commodities when applied for the suppression and control of a wide variety of grasses and weeds. Falcon Lab, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ammonium soap salts of higher fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated).

DATES: This regulation is effective July 9, 2008. Objections and requests for hearings must be received on or before September 8, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0571. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow

the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–1259; e-mail address: *wilkins.raderrio@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0571 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0571, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of August 8, 2007 (72 FR 44521) (FRL–8139–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7186) by Falcon Lab, LLC, 1103 Norbee Drive, Wilmington, DE 19803. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of ammonium soap salts of higher fatty acids (C_8–C_{18} saturated and C_8–C_{12} unsaturated). This notice failed to include a summary of the petition prepared by the petitioner Falcon Lab, LLC, nor was a summary of the petition provided in the docket for this action. Therefore, EPA republished notice of receipt of this petition in the **Federal Register** of April 16, 2008 (73 FR 20631) (FRL–8360–1), and posted the summary of the petition in the docket for this action. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First,

EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Ammonium soap salts of fatty acids are one class of salts of fatty acids. Soaps are mineral salts of naturally occurring fatty acids. The fatty acids are a significant part of the normal daily diet, for they occur in dietary lipids which usually constitute about 90 grams in a day's diet. As discussed in this Unit, as part of the reregistration process, the Agency has already conducted a risk assessment for soap salts of fatty acids for their potential effects to human health and the environment and determined that all registered pesticide products containing the active ingredient Soap Salts are not likely to cause unreasonable adverse effects in people or the environment and were eligible for reregistration.

The Agency issued a Reregistration Eligibility Document (RED) in September 1992 for potassium salts of fatty acids (C_{12}–C_{18} saturated and C_{18} unsaturated, including potassium laureate, potassium myristate, potassium oleate, and potassium ricinoleate (CAS No. 10124–65–9) and ammonium salts of fatty acids (C_8–C_{18} saturated and C_{18} unsaturated, including ammonium oleate (CAS No. 84776–33–0). While the RED does not specifically identify the active ingredient ammonium nonanoate (also called pelargonic acid) by name, the Agency believes the conclusions of the RED are applicable to ammonium nonanoate because the RED defines the soap salts of fatty acids that were assessed to be (C_8–C_{18}) and ammonium nonanoate (pelargonic acid) is an ammonium salt of C_9 fatty acid. All soap salts with fatty acids having aliphatic carbon chains lengths in the range between C_8 and C_{18} saturated and C_8–C_{12} unsaturated are virtually identical in regard to chemistry and toxicology.

In support of the RED, the Agency conducted a risk assessment for soap salts for their potential effects (if any) to human health. The Agency determined that soap salts of fatty acids are metabolized, forming simple compounds that serve as energy sources and structural compounds used in all living cells, and have low acute toxicity by the oral route of exposure. The RED notes that soap salts of potassium salts of coco fatty acid and sodium salts of caprylic acid, when administered to lab animals at high doses cause reproductive and mutagenic effects. However, based on the low toxicity of ammonium nonanoate and data/information reviewed in support of the tolerance exemption for pelargonic acid (ammonium nonanoate acid) which demonstrated that pelargonic acid did not cause developmental or mutagenic effects, the Agency believes that there would likely not be any reproductive or mutagenic effects for this active ingredient when used in the manner as described in this rule. Further the pesticidal concentration of ammonium nonanoate will be exceedingly lower in comparison to those high doses which were administered in the studies using potassium salts of coco fatty acids.

The active ingredient ammonium soap salts of fatty acids, is used as a contact, non-selective, broad spectrum, foliar-applied herbicides. This active ingredient was federally registered in 2006 as a non-food use pesticide for the suppression and control of a wide variety of undesirable grasses and weeds. In addition, ammonium salts of fatty acids have been registered for other non-food uses, including repelling rabbits and deer from forage and grain crops, vegetables and field crops, in orchards, and on nursery stock, ornamentals, flower, lawns, turfs, vines, shrubs and trees.

As part of this rulemaking, EPA reviewed the Soap Salts of Fatty Acid RED, the Pelargonic Acid Tolerance Exemption (40 CFR 180.1159), the data and/or information submitted by the petitioner and has concluded that ammonium nonanoate, a C_9 ammonium salt fatty acid (also called pelargonic acid) and other ammonium soap salts of higher fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) do not pose an unreasonable adverse effect to the environment, when used in accordance with approved labeling. While this pesticide is not intended to be sprayed directly on food or feed crops, the Agency has determined that there may be a potential for exposure from residues of ammonium soap salts on food and feed as a result of unintentional spray or drift.

In lieu of submitting new Tier I toxicity studies for ammonium nonanoate, the registrant relied on data previously submitted in support of the Soap Salts Registration Eligibility Document (RED). The RED concluded that fatty acids such as oleic acids and related C_{12}–C_{18} fatty acids are generally considered to be low toxicity by the oral route of exposure and gives a category IV for both oral and dermal route of exposure. This conclusion can be extended to all ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) because of the virtual identical chemistry and toxicology of these fatty acids.

In addition to relying on the RED, the petitioner submitted requests for waiver of additional studies in support of its petition for a tolerance exemption.

1. *Acute inhalation toxicity*: Ammonium salts of fatty acids do not form aerosol particulates, have a vapor pressure near that of water and do not readily vaporize. ''In a study in which 10 rats were exposed for 8 hours to saturated vapors of mixed isomers of decanoic acid (C_{10}) no deaths were observed.'' MRID 43843503 reported that the LC_{50} was > 1.244 milligrams/liter (mg/L) for nonanoic acid (C_9).

2. *Subchronic oral toxicity*: MRID 43843507 reported that no significant effects were demonstrated in a 14–day range finding study in rats given nonanoic acid at doses up to 1,834 mg/kilogram (kg)/day. ''The agency concluded that a 90–day oral toxicity study was not necessary for a dietary risk assessment'' of nonanoic acid due to the following:

i. Lack of effects at extremely high doses in the range finding study;

ii. Nature of nonanoic acid (a fatty acid) and its ubiquity in nature;

iii. The results from acute mammalian toxicology studies; and

iv. The unlikelihood of prolonged human exposure via the oral route due to the proposed use patterns.

Dietary exposure would be minimized via plant metabolism of ammonium nonanoic acid through oxidative pathways common for fatty acids. The same rationale can be applied to ammonium salts of fatty acids because they share a chemical identity with ammonium nonanoic acid.

3. *Teratogenicity*: MRID 43843508, a developmental toxicity study of nonanoic acid (C_9 fatty acid), reported that the treatment had no adverse effects on clinical signs, body weight, or food/water consumption. No fetal toxicity was observed. The mean number of viable fetuses, early or late resorptions, implantation sites, corpora lutea, pre- and post-implantation losses, sex ratios and fetal body weight were comparable to those of the control group. The no observed adverse effect level (NOAEL)

for maternal and developmental toxicity was 1,500 mg/kg/day and the lowest observed adverse effect level (LOAEL) was > 1,500 mg/kg/day. The developmental toxicity study for ammonium nonanoic acid showed no effects at dose levels above the limit dose (1,000 mg/kg/day). Therefore, the tier 1 data requirement for food use for this biochemical pesticide is satisfied. The same rationale can be applied to ammonium salts of fatty acids because they share a chemical identity with ammonium nonanoic acid.

4. *Immune response*: This study is conditionally required when there is a requirement for a sub-chronic oral, dermal, or inhalation study, depending on the most likely routes of exposure. The registrant requested waivers based on the factors given for the waiver request of the 90–day oral toxicity study.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Aggregate exposure to ammonium salts may occur via oral and dermal routes. Since the acute oral toxicity of soap salts is low (Toxicity Category IV), the risks anticipated from oral exposures are considered minimal. The acute dermal toxicity is also low (Toxicity Category IV). Longer dermal exposures can produce mild to moderate irritation, but soap salts are not skin sensitizers. As a result, the anticipated risks from dermal exposure are considered minimal. Since the inhalation route is not a likely exposure pathway the anticipated risk from inhalation exposure are also considered minimal.

A. Dietary Exposure

1. *Food*. Pesticides containing ammonium soap salts of fatty acids are likely to be used as contact, non-selective, broad spectrum, foliar-applied herbicides or as repellents. As such they are likely not to be applied directly to any food plants. Moreover, ammonium salts of fatty acids are expected to be rapidly metabolized by soil microorganisms, with a half-life of perhaps less than one day, therefore residues of ammonium salts of fatty acids when used in accordance with approved labeling will not persist in the environment. The lack of direct application to food plants coupled with the rapid metabolization of ammonium salts when used as pesticides will result in low exposures to ammonium soap salts of fatty acids. However, if the exposures to ammonium soap salts to humans from food commodities that have been indirectly sprayed with residues of ammonium salts occur, the Agency does not expect exposures to be unsafe due the low acute toxicity and likely low exposure of these soap salts.

2. *Drinking water exposure*. No significant exposure to drinking water is expected from an accumulation of soap salts in the aquatic environment when it is used in accordance with approved labeling. Ammonium salts of fatty acids are not to be applied directly to water.

B. Other Non-Occupational Exposure

Non-occupational dermal exposure to ammonium salts of fatty acids will be expected since the use of this pesticide will be in the residential settings. However, the Agency believes that any hazard related to exposure to residential users from this pesticide will likely be insignificant. This belief is based on the fact that the toxicity data demonstrated no toxic endpoints upon which to base a risk characterization at or below 1,000 mg/kg of body weight/day (the limit dose).

Non-occupational inhalation exposure is not expected because ammonium salts of fatty acids do not form aerosol particulates, have a vapor pressure near that of water, and do not readily vaporize.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effect of exposure to residues that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. Except for ocular exposure, ammonium nonanoate is of low toxicity, and it is not anticipated that there would be cumulative effects from common mechanisms of toxicity.

Studies of fatty acids and fatty acid salts previously submitted to the Agency, indicate that the half-life of fatty acids is less than one (1) day (MRID 00157476). As can be expected, there is very rapid microbial degradation of fatty acids in soil. Fatty acids and their salts are excellent substrates for microbial growth, serving both as carbon sources and energy sources. The active ingredient cannot totally dissipate from soil, because there is a natural content of fatty acids in soil resulting from plant metabolism and by formation of microbial organisms. Fatty acids constitute a significant portion of the normal daily diet of mammals (including humans, birds, and invertebrates since they are found in large amounts in the form of lipids in all living tissues (including seeds). Microbial metabolism of fatty acids has the effect of either converting the degradates to CO^2 and ester (if used as an energy source) or converting the carbon content of the fatty acid to any of the thousands of naturally occurring organic substances produced by the soil microflora (if used as a carbon source). Based on these known facts of the role of fatty acids in the environment and in food and feed, there should be no concern for cumulative effects of ammonium salts of fatty acids used as pesticides.

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm to the U.S. population, including infants and children , will result from aggregate exposure to residues of ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) due to their use as a pesticide. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed in Unit III, ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) have low toxicity. Moreover, many soap salts of fatty acids are part of the human diet and pesticide exposures are not expected to exceed the levels of naturally occurring fatty acids in commonly eaten foods. Accordingly, exempting ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) from the requirement of a tolerance is considered safe.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure MOE (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure are often referred to as uncertainty or safety factors. In this instance, based on all available information, the Agency concludes that ammonium salts of fatty acids are practically non-toxic to mammals including infants and children. Because there are no threshold effects of concern to infants, children, and adults when ammonium salt is used as labeled, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative

effects do not apply. As a result, EPA has not used a MOE approach to assess the safety of ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated).

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate''. Ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) are not known endocrine disruptors nor are they related to any class of known endocrine disruptors.

B. Analytical Method(s)

There have been no analytical procedures conducted to ascertain residuals of ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated) on food crops that have been exposed to pesticides containing such ammonium salts of fatty acids. Naturally occurring fatty acids constitute a significant part of the normal daily diet and are of low toxicity when taken orally and pose no known health risks. Further, based on data and/or information already reviewed by the Agency in support of the reregistration of soap salts of fatty acids, the residues of these salts of fatty acids from pesticide use are not likely to exceed and are likely to be indistinguishable from levels of naturally occurring fatty acids in commonly eaten foods.

C. Codex Maximum Residue Level

There are currently no established Codex, Canadian, or Mexican MRLs for ammonium salts of fatty acids in/on plants or livestock commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. exemption from the requirement of a tolerance.

VIII. Conclusions

There is currently no tolerance or tolerance exemption for ammonium salts of fatty acids. A proposed rule was published on May 1, 1996 (61 FR 19233) (FRL–5362–9), to exempt ammonium oleate and related C_8–C_{18} fatty acids ammonium salts from the requirement of a tolerance for residues in or on all raw agricultural commodities when used in accordance with good agricultural practice; however, the proposed rule was never finalized by the Agency. This action will formalize food use approval for ammonium salts of fatty acids as stated in the 1992 RED: Soap Salts, by exempting ammonium salts of higher fatty acids from the requirement of a tolerance.

The Agency has determined that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children from aggregate exposures to residues of ammonium salts of fatty acids (C_8–C_{18} saturated; C_8–C_{12} unsaturated). This conclusion is based on the demonstrated, very low acute oral and dermal toxicity of these ammonium salts and because the Agency anticipates that actual exposures in food will be low due to the uses of ammonium soap salts of fatty acids.

IX. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 30, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1284 is added to subpart D to read as follows:

§ 180.1284 Ammonium salts of higher fatty acids ($C_{8-}C_{18}$ saturated; $C_{8-}C_{12}$ unsaturated); exemption from the requirement of a tolerance.

This regulation establishes an exemption from the requirement of a tolerance for residues of the ammonium salts of higher fatty acids $C_{8-}C_{18}$ saturated; $C_{8-}C_{12}$ unsaturated on in or on all food commodities when applied for the suppression and control of a wide variety of grasses and weeds.

[FR Doc. E8–15516 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 06–121, 02–277, 04–228, MM Docket Nos. 01–235, 01–317, 00–244, 99–360; FCC 07–216]

2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rule change to section 73.3555(d) of the Commission's rules, which was published in the **Federal Register** on February 21, 2008. The rule relates to the cross-ownership of broadcast stations and newspapers within a designated market area.

DATES: The final rule published on February 21, 2008 (73 FR 9481), modifying 47 CFR 73.3555(d), is effective July 9, 2008.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Mania Baghdadi, *Mania.Baghdadi@fcc.gov*, 202–418–2330, of the Media Bureau, Industry Analysis Division.

SUPPLEMENTARY INFORMATION: In a Report and Order and Order on Reconsideration released on February 4, 2008, FCC 07–216, and published in the **Federal Register** on February 21, 2008, 73 FR 9481, the Federal Communications Commission adopted a new rule which contains information collection requirements subject to the Paperwork Reduction Act. The Report and Order and Order on Reconsideration stated that the rule change requiring OMB approval would become effective immediately upon announcement in the **Federal Register** of OMB approval. On June 23, 2008, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 73.3555(d). These information collections are assigned OMB Control Nos. 3060–0031 and 3060–0110. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule change requiring OMB approval.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507. Broadcast licensees are reminded that, as enumerated in paragraph 78 of the Report and Order and Order on Reconsideration, licensees with a pending waiver request that involves an existing station combination consisting of more than one newspaper and/or more than one broadcast station will have 90 days after the changes to 47 CFR 73.3555(d) become effective to either amend their renewal or waiver requests or file a request for a permanent waiver. Entities that have been granted a temporary waiver of the newspaper/broadcast cross-ownership rule pending the completion of this rulemaking will have 90 days after the changes to 47 CFR 73.3555(d) become effective to either amend their renewal or waiver requests or file a request for a permanent waiver. See 73 FR at 9483, 9487.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–15594 Filed 7–8–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 132
Wednesday, July 9, 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.

PEACE CORPS

22 CFR Part 304

RIN 0420–AA23

Claims Against the Government Under the Federal Tort Claims Act

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: The Peace Corps proposes to revise its regulation concerning claims filed under the Federal Tort Claims Act, to make the regulation internally consistent with another provision stating that the Chief Financial Officer has authority to approve claims for amounts under $5000.

DATES: Comments must be received by August 8, 2008.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov.* Include RIN 0420–AA23 in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, *sglasow@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: On March 16, 2007, Peace Corps revised section 22 CFR § 304.7 to provide that the Chief Financial Officer ''has the authority to adjust, determine, compromise, and settle claims for less than $5,000.'' This proposed revision would rectify an omission in § 304.10, which does not currently refer to the Chief Financial Officer's authority for deciding claims worth less than $5,000.

On April 22, 2008, the Peace Corps published a direct final rule that revised part 304.10. The Peace Corps received one comment within the comment period. As a result, the Peace Corps is republishing this revision to the regulation as a proposed rule.

Section-by-Section Analysis

Section 304.10

Subpart (b) is amended to reflect the fact that the Chief Financial Officer will make final determinations for claims worth less than $5,000.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects in 22 CFR Part 304

Claims.

Accordingly, Peace Corps proposes to amend 22 CFR part 304 as follows:

PART 304—CLAIMS AGAINST THE GOVERNMENT UNDER THE FEDERAL TORT CLAIMS ACT

1. The authority citation for part 304 continues to read as follows:

Authority: 28 U.S.C. 2672; 22 U.S.C. 2503(b); E.O. 12137, as amended.

2. Amend § 304.10 to revise paragraph (b) to read as follows:

§ 304.10 Review of claim.

* * * * *

(b) After legal review and recommendation by the General Counsel, the Director of the Peace Corps will make a written determination on the claim, unless the claim is worth less than $5,000, in which case the Chief Financial Officer will make the written determination.

Dated: July 1, 2008.

Tyler Posey,

General Counsel.

[FR Doc. E8–15583 Filed 7–8–08; 8:45 am]

BILLING CODE 6015–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–146895–05]

RIN 1545–BF05

Election to Expense Certain Refineries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code (Code) and affects taxpayers who own refineries located in the United States. The temporary regulations reflect changes to the law by the Energy Policy Act of 2005. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by September 8, 2008. Outlines of the topics to be discussed at the public hearing scheduled for Thursday, November 20, 2008, at 10 a.m. must be received by Tuesday, October 14, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–146895–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–146895–05),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–146895–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Philip Tiegerman at (202) 622–3110; concerning submissions of comments, hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 8, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.179C–1T(d)(2), § 1.179C–1T(d)(3), § 1.179C–1T(e)(2), and § 1.179C–1T(f). The collections of information in § 1.179C–1T(d)(2) and § 1.179C–1T(f) are required in order for a taxpayer to make and support an election under section 179C(a) to expense 50 percent of the cost of qualified refinery property. The collection of information in § 1.179C–1T(d)(3) is required in order for the taxpayer to revoke an election under section 179C(a). The collection of information in § 1.179C–1T(e)(2) is required in order for a taxpayer that is an organization described in section 1381 that has made an election under section 179C(a) to allocate all or a portion of this expense to its owners that are organizations described in section 1381. The collection of information is mandatory. The likely recordkeepers are owners of certain existing refineries.

Estimated total annual recordkeeping burden: 120 hours.

The estimated annual burden per recordkeeper varies depending on individual circumstances, with an estimated average of 10 hours.

Estimated number of recordkeepers: 12.

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

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 and Explanation of Provision

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 179C. The temporary regulations define ''qualified refinery property'' and assist the taxpayer in identifying those costs that may be expensed pursuant to this provision. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. The collections of information in § 1.179–1T(d)(2), (e)(2) and (f) are required by section 179C(b), (g) and (h), respectively, and, therefore, are not imposed by these regulations. Accordingly, they are not subject to the Regulatory Flexibility Act. Only the collection of information in § 1.179–1T(d)(3), regarding the revocation of an election under section 179C(a), is imposed by these regulations. It is hereby certified that the collection of information contained in § 1.179–1T(d)(3) of the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that although most of the 12 taxpayers who potentially could or would make an election under section 179C(a) will be small entities, it is expected that few, if any, of those 12 taxpayers once having made the election will choose to revoke it. Therefore, the collection of information will not affect a substantial number of small entities. The information required to revoke an election under section 179C(a) consists entirely of a portion of the information required to make the election. Consequently, the economic burden for those taxpayers who choose to revoke the election is minimal in nature and the regulations do not impose any burden in addition to the burden associated with making the election. 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, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, November 20, 2008, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the Constitution Avenue entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building

access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments or electronic comments by October 7, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, October 14, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Philip Tiegerman of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.179C also issued under 26 U.S.C. 179C. * * *

Par. 2. Section 1.179C–1 is added to read as follows:

§ 1.179C–1 Election to expense certain refineries.

[The text of proposed § 1.79C–1 is the same as the text of § 1.179C–1T (a) through (g) published elsewhere in this issue of the **Federal Register**].

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 08–1424 Filed 7–3–08; 3:33 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

Fish and Wildlife Service

50 CFR Part 27

RIN 1024–AD70

General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service

AGENCIES: Fish and Wildlife Service and National Park Service, Interior.

ACTION: Notice of re-opening of comment period.

SUMMARY: The Department of the Interior, through the National Park Service and the Fish and Wildlife Service, announces the re-opening of the comment period on the proposed rule concerning the possession and transportation of firearms in national park areas and national wildlife refuges. The proposed rule was published in the **Federal Register** on April 30, 2008 (73 FR 23388).

DATES: We must receive your comments by August 8, 2008.

ADDRESSES: You may submit comments, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

—Mail: Public Comments Processing, Attn: 1024–AD70; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

—Hand-deliver: 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mark Lawyer, (202) 208–3181, *Mark_Lawyer@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Background

The comment period on our proposed rule governing firearms on lands managed by the National Park Service (NPS) and Fish and Wildlife Service (FWS) closed on June 30, 2008. The Department of Interior has received a number of written requests to extend the public comment period for this proposed rule. We have given consideration to these requests and believe it is appropriate to provide an additional 30 day period for comment on the proposed regulation. We are therefore re-opening the comment period for an additional 30 days.

Public Comments

If you have already commented on the rule you do not have to resend your comment. We will consider it when we prepare the final rule. We will also consider any comments received between the close of the comment period on June 30 and the re-opening of this comment period.

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.

Dated: July 3, 2008.

Lyle Laverty,

Assistant Secretary of the Interior for Fish and Wildlife and Parks.

[FR Doc. E8–15614 Filed 7–8–08; 8:45 am]

BILLING CODE 4312–52–P

POSTAL SERVICE

39 CFR Part 111

Treatment of Undeliverable Books and Sound Recordings

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise the mailing standards for the treatment of books and sound recordings that are found loose in the mail or undeliverable as addressed. The revision would eliminate confusion and simplify procedures.

DATES: Written comments must be received on or before August 8, 2008.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. Do not submit comments via fax or e-mail.

FOR FURTHER INFORMATION CONTACT: Bert Olsen at 202–268–7276.

SUPPLEMENTARY INFORMATION:

Mailing Standards of the United States Postal Service, Domestic Mail

Manual (DMM®) 507.1.9.2, as originally written (under the section titled *Dead Mail*), was intended to facilitate a process for identifying and returning to the original publisher or distributor books and recordings that had become undeliverable as a result of being ''loose in the mail'' (contents separated from packaging and other address information). Unpredictably, the rule has been misinterpreted by some publishers and distributors as allowing them to reclaim ownership of all UAA mail and not just mail that was truly identified as ''loose'' in the mail. Practically speaking, there are very few commercially mailed books and sound recordings found loose in the mail. Books and sound recordings seldom separate from their outer wrappings. The vast majority of pieces that are not delivered are pieces that the Postal Service attempted to deliver but were refused by the addressee.

Therefore, the Postal Service is proposing to remove DMM Section 507.1.9.2 in its entirety. To clarify their preferences regarding UAA pieces, mailers are encouraged to use appropriate ancillary service endorsements. Currently, many commercially mailed books and sound recordings are mailed at Standard Mail and Package Services prices using the endorsement, ''Change Service Requested'', to indicate that the piece should not be returned. This endorsement requires that UAA pieces, including refused pieces, be disposed of by the Postal Service and a notice of the new address (if applicable) or reason for nondelivery be provided to the mailer. Alternatively, mailers who wish to have UAA Standard Mail or Package Services pieces returned can use the endorsement, ''Return Service Requested.'' This endorsement requires that UAA pieces, including refused packages, be returned to the sender with the reason for non-delivery; the sender is charged postage at the First-Class Mail single-piece price or Priority Mail single-piece price, for pieces originally sent as Standard Mail, or the appropriate Package Services single-piece price, for pieces originally sent as Package Services mail, based on the weight of the piece.

Background Information

DMM 507.1.9 defines ''dead mail'' as ''matter which is deposited in the mail that is or becomes undeliverable and cannot be returned to the sender from the last office of address.'' DMM 507.1.9.1 sets out general procedures for attempting to identify senders or recipients of dead mail and the means by which identifiable items are returned and postage is collected for return. DMM 507.1.9.3 notes that the Postal Operations Manual (POM) ''contains USPS policy and procedures for handling and disposing of dead mail. Those procedures include provisions for the sale or donation of dead mail.

In the past, as now, commercial mailers of books and sound recordings could endorse their mailings to provide for the return of undeliverable as addressed (UAA) items to them by guaranteeing payment upon return, or could by endorsement, or by lack of endorsement, indicate that return was not requested, in which case the undeliverable items were to be considered as the property of the U.S. Postal Service.

DMM 507.1.5.3 and 1.5.4 list and describe the endorsements available to mailers of Standard Mail and Package Services parcels who want to have pieces that are undeliverable as addressed forwarded or returned. Each of these endorsements (''Forwarding Service Requested,'' ''Return Service Requested,'' or ''Address Service Requested,''), provide for return of an item to the mailer under certain specified conditions when the mailer provides payment for the return at the appropriate price.

Accordingly, the Postal Service proposes to delete DMM 507.1.9.2. The Postal Service recognizes that this change may affect the ancillary service endorsement choices of mailers of books and sound recordings and therefore proposes that the final rule will be effective 60 days following its publication.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b),(c)] regarding proposed rulemaking by 39 U.S.C 410(a), the Postal Service invites comments on the following proposed revisions to the *Domestic Mail Manual*, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, and 5001.

2. Revise the following section of the *Domestic Mail Manual* (DMM) as set forth below:

* * * * *

500 Additional Services

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.9 Dead Mail

* * * * *

[Delete 1.9.2 in its entirety and renumber current 1.9.3 as new 1.9.2]

1.9.2 Books and Sound Recordings

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–15223 Filed 7–8–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Waiver of Signature Delivery Process

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to update the standards regarding delivery of Express Mail® items with waiver of signature requested and return receipt for merchandise items with waiver of signature requested. We propose that employees deliver these shipments without first attempting to obtain a signature from the addressee.

DATES: We must receive your comments on or before July 24, 2008.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments, Monday through Friday between 9 a.m. and 4 p.m., USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC. Do not submit comments via fax or e-mail.

FOR FURTHER INFORMATION CONTACT: Monica Grein at 202–268–8411.

SUPPLEMENTARY INFORMATION: Currently, the delivery employee attempts to obtain a signature from the addressee even when the sender has authorized a waiver of signature for Express Mail items or items mailed with a return receipt for merchandise. Waiver of signature authorizes delivery to be made

without obtaining the signature of the addressee or addressee's agent as long as the delivery employee establishes the article can be left in the addressee's mail receptacle or other secure location. By requesting waiver of signature, the sender agrees to accept the delivery time and date scan information as valid record of delivery.

The new process will allow a delivery employee to sign the PS Form 3849, *Sorry We Missed You,* without attempting to obtain a signature from the addressee. After signing the PS Form 3849, the delivery employee will deliver the item to the addressee's mail receptacle or other secure location. This process will expedite delivery time because the delivery employee will not be required to try to obtain a signature from the addressee or addressee's agent, when a waiver of signature is authorized.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

113 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

* * * * *

[Revise the text of the first and second sentences in item b as follows:]

b. When a waiver of signature is authorized by the mailer, the delivery employee signs upon delivery. The item is delivered to the addressee's mail receptacle or other secure location.* * *

* * * * *

115 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the text of 2.2 as follows:]

A mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee's agent by checking and signing the waiver of signature on Label 11–B or Label 11–F, *Express Mail Post Office to Addressee,* or indicating waiver of signature is requested on single ply commercial label. Completion of the waiver of signature authorizes the delivery employee to sign upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. Mailers who request waiver of signature will be provided only the delivery date and time, and not an image of the signature when accessing delivery information on the Internet or when calling the toll-free number.

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

413 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

* * * * *

[Revise the text of the first and second sentences in item b as follows:]

b. When a waiver of signature is authorized by the mailer, the delivery employee signs upon delivery. The item is delivered to the addressee's mail receptacle or other secure location.

* * *

* * * * *

415 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the text of 2.2 as follows:]

A mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee's agent by checking and signing the waiver of signature on Label 11–B or Label 11–F, *Express Mail Post Office to Addressee*, or indicating waiver of signature is requested on single ply commercial label. Completion of the waiver of signature authorizes the delivery employee to sign upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. Mailers who request waiver of signature will be provided only the delivery date and time, and not an image of the signature when accessing delivery information on the Internet or when calling the toll-free number.

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

8.0 Return Receipt for Merchandise

* * * * *

8.3 Mailing

* * * * *

8.3.2 How To Mail

A mailer can obtain Form 3804 and Form 3811 (return receipt) at the Post Office or from any rural carrier. Observe these procedures:

* * * * *

[Revise item f as follows:]

f. By signing the waiver on Form 3804, customers are instructing the USPS to deliver the item without obtaining the addressee's or addressee's agent's signature. Completion of the waiver of signature authorizes the delivery employee to sign upon delivery. The item is delivered to the addressee's mail receptacle or other secure location. To request waiver of signature, detach both parts of the gummed sections of label 3804 and attach to the mailpiece.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 if our proposal is adopted.

Neva Watson,

Attorney, Legislative.

[FR Doc. E8–15212 Filed 7–8–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0186, FRL–8569–7]

Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District, Including the Nevada County Air Pollution Control District Portion, Plumas County Air Pollution Control District Portion, and Sierra County Air Pollution Control District Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Northern Sierra Air Quality Management District (NSAQMD) portion of the California State Implementation Plan (SIP), including the Nevada County Air Pollution Control District (NCAPCD) portion, Plumas County Air Pollution Control District (PCAPCD) portion, and Sierra County Air Pollution Control District (PCAPCD) portion of the SIP. These revisions concern the permitting of air pollution sources. We are approving and removing local rules under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 8, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0186, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *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 below.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of NSAQMD Rules 501, 505, 510, 511, 512, 513, 515, and 517 into the SIP and the removal of eight NCAPCD, two PCAPCD, and four SCAPCD permitting rules from the SIP. In the Rules section of this **Federal Register**, we are approving revisions in these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

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

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 16, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–15436 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 516 and 552

[GSAR Case 2006–G504; Docket 2008–0007; Sequence 7]

RIN 3090–AI58

General Services Acquisition Regulation; GSAR Case 2006–G504; Rewrite of GSAR Part 516; Types of Contracts

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language pertaining to requirements for types of contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before September 8, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006–G504 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*.Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2006–G504'' under the heading ''Comment or Submission.'' Select the link ''Send a Comment or Submission '' that corresponds with GSAR Case 2006–G504. Follow the instructions provided to complete the ''Public Comment and Submission Form.'' Please include your name, company name (if any), and ''GSAR Case 2006–G504'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat Division (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006–G504 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia Davis at (202) 219–0202, or by e-mail at *Cecelia.Davis@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G504.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise the prescriptions for clauses included in GSAR 516.203–4, Contract clauses, and GSAR 516.506, Solicitation provisions and contract clauses, and to make minor changes to GSAR 516.603–3, Limitations. The associated clauses located in GSAR 552.216 are amended to relocate the clause at 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, to GSAR 552.238, to retain the clause at 552.216–71, Economic Price Adjustment-Stock and Special Order Program Contracts, to revise GSAR clause 552.216–72, Placement of Orders, to make minor edits to GSAR clause 552.216–73, Ordering Information, and to include new GSAR clause 552.216–XX, Task-Order and Delivery-Order Ombudsman.

This proposed rule is a result of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative. The initiative was undertaken by GSA to revise the GSAM to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This proposed rule revises GSAR 516.203–4, Contract clauses, 516.506, Solicitation provisions and contract clauses, and associated clauses in GSAR 552.516. The information in GSAR 516.203–4(a) is relocated to GSAR Part 538 and paragraph (b) is renumbered accordingly and contains minor edits. GSAR 516.506 is revised to delete paragraphs (b), (c), (d), and (e) from this part and relocate them to GSAR Part 538. New GSAR clause, 552.216–XX, Task–Order and Delivery–Order Ombudsman, is added to describe the GSA Ombudsman's responsibilities. GSAR 516.603–3, Limitations, is renumbered as 516.603–70 as a supplement to the FAR and the title is changed to ''Limitations'' on the use of letter contracts for architect-engineer (A-E) services. GSAR clause 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, is relocated to GSAR Part 538. The GSAR clause at 552.216–72, Placement of Orders, is revised to delete Alternates II, III, and IV and relocate them to GSAR Part 538, and it contains minor edits. The GSAR clause at 552.216–73, Ordering Information, contains minor edits.

Discussion of Comments

There were six public comments received in response to the ''Advanced Notice of Proposed Rulemaking.'' The first commenter suggested that the GSAR should include coverage on Governmentwide acquisition contracts (GWAC) and the use of GSA assisted services. The GWAC and assisted services are very closely related: GSA's assisted services are offered through GWAC contracts. GWACs are negotiated acquisitions covered by FAR Part 15 (GSAM 515), while FAR Part 16 (GSAM Part 516) covers the authority for GWACs (*i.e.*, IDIQ contracts). Both GSAM parts are in the rewrite effort so, to a degree, the comment is being addressed. During our rewrite process, our proposed coverage of GWACs and assisted services was determined to be satisfactory by the cognizant office within FAS. We construe the comment, however, to mean that the GSAM should devote a special section to GWACs and assisted services, such as is done in GSAM 538 which addresses the Federal Supply Schedule Program. The suggestion is not without merit: however, it is outside the scope of the current GSAM effort, which did not envision the creation of new GSAM parts. The current effort has revealed a number of issues that need to be addressed in future updates to the GSAM and we propose to revisit that comment when future revisions are considered. The second commenter suggested establishing a central location for all contract clauses GSA includes in FSS and GWAC contracts: in particular, the clauses denoted as ''x-FSS clauses.'' One of the purposes of the GSAM rewrite is to put all clauses used by GSA in the GSAM. While this goal may not be 100 percent achieved in the initial rewrite effort, at some point in time all clauses will be in one place—the GSAM.

The third and fourth commenter submitted a response that said GSA schedule holders are penalized because they are subject to the Economic Price Adjustment clause limiting price increase to 10 percent after a one-year waiting period. GSAR clauses 552.216–70 and 552.216–71 establish contract coverage for economic price adjustments under Multiple Award Schedules (MAS) and Global Supply Item contracts, respectively. With respect to the MAS, GSAR clause 552.216–70, this comment will be addressed in the coverage for GSAR Part 538. GSAR clause 552.216–71 indicates that there is a 10 percent cap on such adjustments unless the Contracting Director approves a higher percentage. In addition, the percentage actually used should be based on historical trends drawn from an index such as the Producer Price Index (PPI). In these cases, the GSAR mirrors the FAR's guidance on economic price adjustments for standard supplies (non-Schedule) as outlined in FAR clause 52.216–2, which also includes the 10 percent cap. Accordingly, the GSAR coverage (meant to be used for a subset of all supply contracts, specifically FAS Schedules) follows the FAR, and the change requested would require a change to the FAR and cannot be made independently in the GSAR. Also, the GSAR makes clear that the percentage used in Schedule contracts (whether above or below 10 percent) is to be based on established historical trends (PPI) and not on a negotiation between one agency and one contractor on each individual contract. This allows the percentage established for each contract to be based on objective data. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6–month period indicates that a different percentage is more appropriate. The fifth commenter recommended that the GSAR be revised to clarify that subcontractor labor hours under a Time and Material (T&M) contract are paid at the rates established in the prime contract or task order. Although the recommendation references ''Time and Material'' contracts, the issue deals with contract financing and should be addressed in GSAM Part 532, Contract Financing. The sixth commenter recommended that the GSAR be revised to provide that contractors may apply G&A to travel costs and other direct changes in accordance with each vendor's approved cost accounting standards disclosure statement. This issue will be addressed in the rewrite of GSAR Part 531.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because revisions are not considered substantive. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 516 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2006–G504), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 516 and 552

Government procurement.

Dated: July 2, 2008

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 516 and 552 as set forth below:

1. The authority citation for 48 CFR parts 516 and 552 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

PART 516—TYPES OF CONTRACTS

2. Amend section 516.203–4 by—

a. Removing paragraph (a), and redesignating paragraphs (b) and (c) as (a) and (b), respectively;

b. Revising the newly redesignated paragraph (a);

c. Removing from the newly redesignated paragraph (b)(1) ''you decide'' and adding ''the contracting officer decides'' in its place; and

d. Removing the period from the end of the newly redesignated paragraphs (b)(1)(i) and (b)(1)(ii) and adding a semicolon in its place; and removing the period from the newly redesignated paragraph (b)(1)(iii) and adding ''; and ''in its place.

The revised text reads as follows:

516.203–4 Contract clauses.

(a) *Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203–3, use 552.216–71, Economic Price Adjustment-Stock and Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) of this subsection.

* * * * *

3. Amend section 516.506 by—

a. Removing from paragraph (a), ''FSS'' each time it appears and adding ''FAS'', in its place; and

b. Removing paragraphs (b), (c), (d), and (e) and adding new paragraph (b), to read as follows:

516.506 Solicitation provisions and contract clauses.

* * * * *

(b) In solicitations and contracts for GSA awarded IDIQ contracts, insert the clause 552.216–XX, Task-Order and Delivery-Order Ombudsman.

4. Amend section 516.603–3 by—

a. Revising the section heading;

b. Revising paragraph (a);

c. Removing from the introductory text of paragraph (b) ''You'' and adding ''The contracting officer'', in its place, and revising paragraph (b)(1); and

d. Removing from paragraph (c) ''you must issue'' and adding ''the contracting officer issues,'' in its place.

The revised text reads as follows:

516.603–70 Limitations on the use of letter contracts for architect-engineer (A-E) services.

(a) *Requirement for a price proposal.* The proposed A-E must provide a price proposal for the non-design effort before the award of a letter contract.

(b) * * *

(1) *The scope.* If the scope includes the design effort, the contracting officer should only authorize the A-E to perform those services that are independent of the design effort (for example, feasibility studies, existing facility surveys or site investigation, etc.). Do not authorize the A-E to begin the design effort before the letter contract is definitized.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.216–70 [Removed]

5. Remove section 552.216–70.

552.216–71 [Amended]

6. Amend section 552.216–71 by removing from theintroductory text of the clause ''516.203–4(b)'' and adding ''516.203–4(a)'' in its place.

7. Amend section 552.216–72 by—

a. Removing from paragraph (c) ''GSA's Federal Supply Service (FSS)'' and adding ''General Services Administration's Federal Acquisition Service (FAS)'', in its place; and removing from the second sentence ''FSS'' and adding ''FAS'' in its place;

b. Removing from paragraph (a) of Alternate I ''Federal Supply Service (FSS)'' and adding ''Federal Acquisition Service (FAS)'' in its place;

c. Removing from paragraphs (c) and (d) of Alternate I ''FSS'' and adding ''FAS'' in its place, respectively; and

d. Removing Alternates II, III, and IV.

552.216–73 [Amended]

8. Amend section 552.216–73 in paragraph (a) by removing ''Federal Supply Service (FSS)'' and adding ''Federal Acquisition Service (FAS)'' in its place.

552.216–XX [Added]

9. Add section 552.216–XX to read as follows:

552.216–XX Task-Order and Delivery-Order Ombudsman.

As prescribed in 516.506, insert the following clause:

TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (DATE)

The GSA Ombudsman will exercise jurisdiction on any matters pertaining to ID/IQ contracts awarded by GSA. The ombudsman will review complaints from contractors and ensure that they are afforded a fair opportunity to be considered for award, consistent with the procedures in the contract.

(End of clause)

[FR Doc. E8–15587 Filed 7–8–08; 8:45 am]

BILLING CODE 6820–61–S

Notices

Federal Register
Vol. 73, No. 132
Wednesday, July 9, 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

July 3, 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.

National Agricultural Statistics Service

Title: Livestock Slaughter.

OMB Control Number: 0535–0005.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production, disposition and prices. General authority for data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies the ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists''. Information from federally and non-federally inspected slaughter plants are used to estimate total red meat production. NASS will use a Federally- and non-Federally-inspected livestock slaughter survey to collect data.

Need and Use of the Information: NASS will combine the survey information collected from both types of plants to estimate total red meat production, consisting of the number of head slaughtered plus live and dressed weights of cattle, calves, hogs and sheep. Accurate and timely livestock estimates provide USDA and the livestock industry with basic data to project future meat supplies and producer prices. Agricultural economists in both the public and private sectors use this information in economic analysis and research.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,800.

Frequency of Responses: Reporting: Weekly, Monthly.

Total Burden Hours: 1,640.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–15600 Filed 7–8–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–08–0059; FV–08–380]

Notice of Funds Availability (NOFA) Inviting Applications for the Specialty Crop Block Grant Program—Farm Bill (SCBGP–FB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately $10 million in grant funds, less USDA administrative costs, to enhance the competitiveness of specialty crops. The funds announced under this program (SCBGP–FB) are separate from the Specialty Crop Block Grant Program (SCBGP) funds announced by AMS on March 5, 2008. SCBGP–FB funds are authorized by the recently enacted Food, Conservation, and Energy Act of 2008 (the 2007 Farm Bill). The application process to apply for the SCBGP–FB funds will parallel those currently found in 7 CFR part 1290. Regulations to implement the amendments made in the 2007 Farm Bill will be published in the near future. State departments of agriculture are encouraged to develop their grant applications promptly. The 2007 Farm Bill requires USDA to obligate the grant funds under this program by the end of the fiscal year, September 30, 2008, which necessitates a short application period. State departments of agriculture interested in obtaining grant program funds are invited to submit applications to USDA. State departments of agriculture, meaning agencies, commissions, or departments of a State government responsible for agriculture within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are eligible to apply. State departments of agriculture are encouraged to involve industry groups, academia, and community-based organizations in the development of applications and the administration of projects.

DATES: Applications must be received not later than September 8, 2008.

ADDRESSES: Applications may be sent to: SCBGP, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0235, Room 2077 South Building, Washington, DC 20250–0235.

FOR FURTHER INFORMATION CONTACT: Trista Etzig, Phone: (202) 690–4942, e-mail: *trista.etzig@usda.gov* or your State department of agriculture listed on the SCBGP and SCBGP–FB Web site at *http://www.ams.usda.gov/fv/.*

SUPPLEMENTARY INFORMATION: SCBGP is authorized under Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and is currently implemented under 7 CFR Part 1290 (published September 11, 2007; 71 FR 53303). Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (the 2007 Farm Bill), amends the Specialty Crops Competitiveness Act of 2004. AMS anticipates issuing regulations in the near future to implement the amendments made in the 2007 Farm Bill. The SCBGP and SCBGP–FB assist State departments of agriculture in enhancing the competitiveness of U.S. specialty crops.

Farm Bill 2007 Changes

Section 10109 the 2007 Farm Bill amended the Specialty Crops Competitiveness Act of 2004 by adding Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands as eligible States and horticulture to the definition of specialty crop. Also, the minimum base grant each State is eligible to receive was amended to an amount that is equal to the higher of $100,000 or include ⅓ of 1 percent of the total amount of funding made available for that fiscal year. AMS anticipates issuing regulations in the near future to implement the amendments made in the 2007 Farm Bill.

SCBGP–FB

Under the SCBGP–FB, specialty crops are defined as fruits and vegetables, dried fruit, tree nuts, horticulture and nursery crops (including floriculture). Examples of enhancing the competitiveness of specialty crops include, but are not limited to: Food safety, food security, nutrition, trade enhancement, education, research, promotion, marketing, plant health programs, ''buy local'' programs, increased consumption, increased innovation, improved efficiency and reduced costs of distribution systems, environmental concerns and conservation, product development, and developing cooperatives.

Each interested State department of agriculture is to submit one application on or before September 8, 2008 to the USDA contact noted in the **FOR FURTHER INFORMATION CONTACT** section. Applications will only be accepted for funding under this Notice. State departments of agriculture who have not yet applied for the fiscal year 2008 SCBGP grant funds (published March 5, 2008; 73 FR 11859) will not be able to apply for both fiscal year 2008 funds in one application. The deadline for funding under the previously announced SCBGP remains March 5, 2009. The deadline for funding under this Notice is September 8, 2008. As a result of the 2007 Farm Bill, in fiscal year 2008 AMS will be administering two separate programs to assist State departments of agriculture in enhancing the competitiveness of U.S. specialty crops. While similar, the SCBGP and SCBGP–FB are distinct with different definitions and separate deadlines. Other organizations interested in participating in this program should contact their State department of agriculture. State departments of agriculture specifically named under the authorizing legislation should assume the lead role in SCBGP–FB projects, and use cooperative or contractual linkages with other agencies, universities, institutions, and producer, industry or community-based organizations as appropriate.

Additional details about the SCBGP–FB application process for all applicants are available at the AMS Web site: *http://www.ams.usda.gov/fv/.*

To be eligible for a grant, each State department of agriculture's application shall be clear and succinct and include the following documentation satisfactory to AMS:

(a) Completed applications must include an SF–424 ''Application for Federal Assistance''.

(b) Completed applications must include one State plan to show how grant funds will be utilized to enhance the competitiveness of specialty crops. SCBGP–FB grant funds will be awarded for projects of up to 3 years duration. An application that builds on a previously funded SCBGP project may also be submitted. In such cases, the State plan should indicate clearly how the project compliments previous work. The state plan shall include the following:

(1) Cover Page. Include the lead agency for administering the plan and an abstract of 200 words or less for each proposed project.

(2) Project Purpose. Clearly state the specific issue, problem, interest, or need to be addressed. Explain why each project is important and timely.

(3) Potential Impact. Discuss the number of people or operations affected, the intended beneficiaries of each project, and/or potential economic impact if such data are available and relevant to the project(s).

(4) Financial Feasibility. For each project, provide budget estimates for the total project cost. Indicate what percentage of the budget covers administrative costs. Administrative costs should not exceed 10 percent of any proposed budget. Provide a justification if administrative costs are higher than 10 percent.

(5) Expected Measurable Outcomes. Describe at least two distinct, quantifiable, and measurable outcomes that directly and meaningfully support each project's purpose. The outcome measures must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public.

(6) Goal(s). Describe the overall goal(s) in one or two sentences for each project.

(7) Work Plan. Explain briefly how each goal and measurable outcome will be accomplished for each project. Be clear about who will do the work. Include appropriate time lines. Expected measurable outcomes may be long term that exceed the grant period. If so, provide a timeframe when long term outcome measure will be achieved.

(8) Project Oversight. Describe the oversight practices that provide sufficient knowledge of grant activities to ensure proper and efficient administration.

(9) Project Commitment. Describe how all grant partners commit to and work toward the goals and outcome measures of the proposed project(s).

(10) Multi-State Projects. If a project is a multi-state project, describe how the States are going to collaborate effectively with related projects. Each State participating in the project should submit the project in their State plan indicating which State is taking the coordinating role and the percent of the budget covered by each State.

Each State department of agriculture that submits an application that is reviewed and approved by AMS is to receive $100,000 to enhance the competitiveness of specialty crops. In addition, AMS will allocate the remainder of the grant funds based on the proportion of the value of specialty crop production in the state in relation to the national value of specialty crop production using the latest available (2006 National Agricultural Statistics Service (NASS) cash receipt data for the 50 States and the Commonwealth of Puerto Rico, 2002 Census of Agriculture

for Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and 2003 Census of Agriculture for American Samoa) specialty crop production data in all states whose applications are accepted.

The amount of the base grant plus value of production available to each State department of agriculture shall be:

(1) Alabama	$125,779.00
(2) Alaska	101,521.00
(3) American Samoa	103,471.00
(4) Arizona	182,056.00
(5) Arkansas	107,059.00
(6) California	1,661,482.00
(7) Colorado	149,569.00
(8) Connecticut	123,322.00
(9) Delaware	106,240.00
(10) District of Columbia	100,000.00
(11) Florida	477,169.00
(12) Georgia	186,541.00
(13) Guam	100,273.00
(14) Hawaii	124,765.00
(15) Idaho	166,690.00
(16) Illinois	132,565.00
(17) Indiana	125,311.00
(18) Iowa	108,541.00
(19) Kansas	106,240.00
(20) Kentucky	107,995.00
(21) Louisiana	115,054.00
(22) Maine	120,202.00
(23) Maryland	131,941.00
(24) Massachusetts	122,932.00
(25) Michigan	203,740.00
(26) Minnesota	136,231.00
(27) Mississippi	109,771.00
(28) Missouri	112,168.00
(29) Montana	107,566.00
(30) Nebraska	111,817.00
(31) Nevada	104,017.00
(32) New Hampshire	106,279.00
(33) New Jersey	152,260.00
(34) New Mexico	120,670.00
(35) New York	189,895.00
(36) North Carolina	208,537.00
(37) North Dakota	125,740.00
(38) Northern Mariana Islands	100,117.00
(39) Ohio	168,562.00
(40) Oklahoma	118,798.00
(41) Oregon	240,868.00
(42) Pennsylvania	181,081.00
(43) Puerto Rico	120,631.00
(44) Rhode Island	103,978.00
(45) South Carolina	130,264.00
(46) South Dakota	102,418.00
(47) Tennessee	132,370.00
(48) Texas	257,521.00
(49) Utah	107,878.00
(50) Vermont	103,861.00
(51) Virgin Islands	100,078.00
(52) Virginia	132,643.00
(53) Washington	360,013.00
(54) West Virginia	100,780.00
(55) Wisconsin	161,035.00
(56) Wyoming	101,755.00

Funds not obligated will be allocated pro rata to the remaining States which applied during the specified grant application period to be solely expended on projects previously approved in their State plan. In such event, a revised application shall be submitted, by a date before the end of the fiscal year, September 30, 2008, determined by AMS, showing how the additional funds will be utilized to enhance the competitiveness of specialty crops.

Applicants submitting hard copy applications should submit one copy of the application package. The SF–424 must be signed (with an original signature) by an official who has authority to apply for Federal assistance. Hard copy applications should be sent only via express mail to AMS at the address noted at the beginning of this notice because USPS mail sent to Washington, DC headquarters is sanitized, resulting in possible delays, loss, and physical damage to enclosures. AMS will send an e-mail confirmation when applications arrive at the AMS office.

Applicants who submit hard copy applications are also encouraged to submit electronic versions of their application directly to AMS via e-mail addressed to *scblockgrants@usda.gov* in one of the following formats: Word (*.doc); or Adobe Acrobat (*.pdf). Alternatively, a standard 3.5″ HD diskette or a CD may be enclosed with the hard copy application.

Applicants also have the option of submitting SCBGP–FB applications electronically through the central Federal grants Web site, *http://www.grants.gov* instead of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants Web site and begin the application process well before the application deadline.

SCBGP–FB is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.170 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Authority: 7 U.S.C. 1621 note.

Dated: July 3, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15646 Filed 7–8–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee will meet in Washington, DC. The purpose of the meeting is to discuss the proposed rule for the management of roadless areas on National Forest System lands in the State of Colorado and to discuss other related roadless area matters.

DATES: The meeting will be held July 30, 2008, from 9 a.m. to 5 pm and July 31, 2008, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Forest Service, Sidney R. Yates Building, 201 14th Street, SW., Washington, DC. Written comments concerning this meeting should be addressed to Forest Service, U.S. Department of Agriculture, EMC, Jessica Call, 201 14th Street, SW., Mailstop 1104, Washington, DC 20024. Comments may also be sent via e-mail to *jessicacall@fs.fed.us,* or via facsimile to 202–205–1012. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service, Sidney R.Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1056 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jessica Call, Roadless Area Conservation National Advisory Committee (RACNAC) Coordinator, at *jessicacall@fs.fed.us* or 202–205–1056.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to Jessica Call, RACNAC Coordinator by July 25, 2008. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period. To offer oral comment, please contact the RACNAC Coordinator at 202–205–1056.

Dated: July 2, 2008.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E8–15563 Filed 7–8–08; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Georgia Advisory Committee (Committee) to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, August 28, 2008, in Conference Room C, Sam Nunn Federal Building, 61 Forsyth St., SW., Atlanta, Georgia 30303. The purpose of the meeting is to receive a briefing on fair housing enforcement in Georgia and discuss the Committee's project on fair housing enforcement.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office of the Commission by September 30, 2008. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to e-mail comments may do so to *pminarik@usccr.gov*. Persons who desire additional information should contact Dr. Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 3, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–15575 Filed 7–8–08; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Kentucky Advisory Committee (Committee) to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Friday, August 8, 2008, in Room 340, Gardiner Hall, University of Louisville, Louisville, Kentucky. The purpose of the meeting is for the Committee to receive a briefing on voting rights for ex-felons and to plan a project for the Committee in fiscal year 2009.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office of the Commission by August 31, 2008. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to e-mail comments may do so to *pminarik@usccr.gov.* Persons who desire additional information should contact Dr. Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 3, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–15576 Filed 7–8–08; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Missouri Advisory Committee to the Commission will convene on Wednesday, August 20, 2008 at 11 a.m. and adjourn at 4 p.m. at the Reynolds Alumni Center, 700 Conley Avenue (corner of Maryland and Conley Avenue), Columbia, Missouri 65211. The purpose of the meeting is to conduct program planning for future SAC activities.

Members of the public are entitled to submit written comments; the comments must be received in the Central Regional Office by August 8, 2008. The address is 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400 or by e-mail *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of the advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 3, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–15595 Filed 7–8–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2008 Survey of Qualified Nonimmigrants.

OMB Control Number: None.

Form Number(s): None.

Type of Request: New collection.

Burden Hours: 1,502.

Number of Respondents: 5,300.

Average Hours per Response: 17 minutes.

Needs and Uses: The U.S. Census Bureau is requesting approval to conduct a survey of the residents of Guam and the Commonwealth of the Northern Mariana Islands (CNMI) as a means to estimate the stock of qualified nonimmigrants from the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau in 2008. According to the Compact of Free Association Act, a qualified nonimmigrant is defined as ''* * * a person, or their children under the age of 18, admitted or resident pursuant to section 141 of the US–RMI or US–FSM Compact or section 141 of the Palau Compact who, as of a date referenced in the most recently published enumeration is a resident of an affected jurisdiction.'' (Pub. L. 108–188, Sec. 104(e)(2)(B)).

The Compact of Free Association is a joint congressional-executive agreement that states that the U.S. will provide funds to Guam, CNMI, Hawaii and American Samoa for a range of development programs and other benefits that are necessary due to the in-migration of citizens from the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The Compact of Free Association became effective for citizens of the Republic of the Marshall Islands and the Federated States of Micronesia in 1986, and for citizens of the Republic of Palau in 1994.

The Compact of Free Association Amendments Act of 2003 introduced the requirement for an enumeration of qualified nonimmigrants to be conducted no less frequently than every five years in Guam, CNMI, Hawaii and American Samoa. In accordance with the Compact of Free Association Amendments Act of 2003, the Office of the Insular Affairs of the U.S. Department of the Interior requested the U.S. Census Bureau to produce estimates of such qualified nonimmigrants for 2008.

The Compact of Free Association Amendments Act of 2003 stipulates that $30,000,000 will be made available for grants to help defray the costs to jurisdictions whose health, educational, social, or public safety services are affected by the increase in qualified nonimmigrants from the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau. To assist in the distribution of funds, an enumeration of the jurisdictions that are affected must be done no less frequently than every five years.

The proposed survey will collect data on place of birth, age, date of birth, sex and year of entry for qualified nonimmigrants residing in Guam and CNMI. Only questions pertaining to the needs of the legislation will be asked. The questionnaire content and data collection procedures will generally follow the American Community Survey (ACS) and Census 2000 procedures. Since data can be obtained for Hawaii from the ACS, it is not cost-effective to include Hawaii in the survey. Because it would be cost prohibitive to design a survey resulting in reliable estimates of the small number of qualified nonimmigrants in American Samoa, the estimate for this area will be derived from existing Census 2000 data.

The jurisdictions outlined in Public Law 108–188 are American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the State of Hawaii as areas that are to receive funds as part of the Compact of Free Association Amendments Act of 2003.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Compact of Free Association Amendments Act of 2003.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: July 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–15572 Filed 7–8–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a meeting.

SUMMARY: The Manufacturing Council will hold a meeting to discuss the Sustainable Manufacturing Initiative and the Manufacturing 2040 project.

DATES: July 23, 2008.

Time: 2 p.m. (e.d.t.).

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369), or visit the Council's Web site at *http://www.manufacturing.gov/council*.

Dated: July 2, 2008.

Kate Sigler,

Executive Secretary, The Manufacturing Council.

[FR Doc. 08–1421 Filed 7–3–08; 11:38 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application for Commercial Fisheries Authorization Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 8, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

instrument and instructions should be directed to Patricia Lawson, (301) 713–2322 or *Patricia.Lawson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act requires any commercial fisher operating in Category I and II fisheries to register for a certificate of authorization that will allow the fisher to take marine mammals incidentals to commercial fishing operations. Category I and II fisheries are those identified by NOAA as having either frequent or occasional takings of marine mammals.

Some states have integrated the National Marine Fisheries Service (NMFS) registration process into the existing state fishery registration process and fishers in those fisheries do not need to file a separate federal registration. If applicable, vessel owners will be notified of this simplified registration process when they apply for their state or Federal permit or license.

II. Method of Collection

Most fishers have their information imported directly into the Marine Mammal Authorization Program (MMAP) from their state. Otherwise they can fill out the forms on NMFS' Web page at *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_registration_form.pdf* or mail in an application made available to them in the NMFS regions.

III. Data

OMB Control Number: 0648–0293.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 12,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $326,310.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–15573 Filed 7–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI95

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint meeting of the Standing and Special Reef Fish Scientific and Statistical Committees (SSCs).

DATES: The Joint Standing and Special Reef Fish SSC meeting will begin at 1:30 p.m. on Wednesday, July 30, 2008 and conclude by 4 p.m. on Thursday, July 31, 2008.

ADDRESSES: The meeting will be held at the Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Joint Standing and Special Reef Fish SSC will meet to develop recommendations for a prioritized five year Gulf of Mexico research plan for submission to the Secretary of Commerce. The SSC will also review the terms of reference for several upcoming stock assessments including SEDAR benchmark (full) assessments on red drum and black grouper, and SEDAR update assessments for red snapper, greater amberjack, gag, and red grouper. In addition, the SSC will review the proposed annual catch limit (ACL) guidelines, and will discuss the future role of the SSC under SEDAR and ACL guidelines.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SSCs will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 3, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–15588 Filed 7–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI96

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a Reef Fish Advisory Panel (AP).

DATES: The meeting will convene at 1:30 p.m. on Tuesday, July 29, 2008 and conclude no later than 12 p.m. on Wednesday, July 30, 2008.

ADDRESSES: The meeting will be held at the Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Reef Fish AP will review and comment on two draft amendments to the Reef Fish Fishery Management Plan. Amendment 29 proposes to rationalize effort and reduce overcapacity in the commercial grouper and tilefish fisheries in order to achieve and maintain optimum yield (OY). Effort management approaches considered in this amendment include:

- Permit endorsements
- Implementation of an Individual Fishing Quota (IFQ) Program

Amendment 30B contains alternatives that propose to:

- Set management thresholds and targets for gag
- Set total allowable catch (TAC) for gag and red grouper
- Set commercial and recreational allocations for gag and red grouper
- Establish accountability measures for gag and red grouper
- Adjust commercial quotas for gag red grouper and the shallow-water grouper aggregate
- Adjust recreational management measures for groupers, which includes:
  a. bag limits
  b. size limits
  c. closed seasons
- Address bycatch and bycatch mortality of groupers
- Create new area closures and/or extend the duration of existing closed areas
- Address regulatory compliance of federally permitted reef fish vessels when fishing in state waters

Copies of the agendas and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 3, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–15589 Filed 7–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0062]

Federal Acquisition Regulation; Information Collection; Material and Workmanship

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning material and workmanship. The clearance currently expires on August 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 8, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts requiring that equipment (*e.g.*, pumps, fans, generators, chillers, etc.) be installed in a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

The Government uses the submitted data to determine whether or not the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

Respondents: *3,160*.

Responses Per Respondent: *1.5*.

Annual Responses: *4,740*.

Hours Per Response: *.25*.

Total Burden Hours: *1,185*.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0062, Material and Workmanship, in all correspondence.

Dated: July, 1, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–15505 Filed 7–8–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor use of interagency motor pool vehicles. A request for public comments was published at 73 FR 20614, April 16, 2008. No comments were received. This OMB clearance expires on August 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 8, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Contract Policy Division, GSA (202) 501–1448.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address. A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.

Responses Per Respondent: 2.

Annual Responses: 140.

Hours Per Response: .5.

Total Burden Hours: 70.

Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: July 1, 2008

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–15523 Filed 7–8–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064]

Federal Acquisition Regulation; Information Collection; Organization and Direction of Work

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning organization and direction of work. The clearance currently expires on August 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 8, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government awards a cost-reimbursement construction contract,

the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The chart is used in administration of the contract and as an aid in determining cost. The chart is used by contract administration personnel to assure the work is being properly accomplished at reasonable prices.

B. Annual Reporting Burden

Respondents: *50*.
Responses Per Respondent: *1*.
Annual Responses: *50*.
Hours Per Response: *.75*.
Total Burden Hours: *38*.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0064, Organization and Direction of Work, in all correspondence.

Dated: July 1, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–15525 Filed 7–8–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 2, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.
Title: FRSS Educational Technology in Public Schools.
Frequency: Once.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).
Reporting and Recordkeeping Hour Burden:
Responses: 1,620.
Burden Hours: 810.

Abstract: NCES is conducting this survey on behalf of the Office of Safe and Drug Free Schools (OSDFS), in the Department of Education. The purpose of this survey is collection information on school districts, which have alternative schools or alternative programs for students at risk of educational failure.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3755. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–15546 Filed 7–8–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 3, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Department of Education, Office of Postsecondary Education, Office of Federal TRIO Programs

Type of Review: Reinstatement.

Title: Application for Grants under the Student Support Services Program.

Frequency: Biennially.

Affected Public: Not-for-profit institutions (primary) State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.
Burden Hours: 10,200.

Abstract: The application is needed to conduct a national competition under the Student Support Services Program for program year 2009–2010. The program provides grants to institions of higher education and combinations of institutions of higher education for projects designed to increase the retention and graduation rates of eligible students; increase the transfer rate of eligible students from two-year to four-year institutions; and foster an institutional climate supportive of the success of low-income and first generation students and individuals with disabilities through the provision of support services.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3754. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–15596 Filed 7–8–08; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008; FRL–8689–4]

2008 Water Efficiency Leader Awards—Call for Applicants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the opening of the application period for the U.S. EPA's third annual Water Efficiency Leader Awards. The awards recognize those organizations and individuals who are providing leadership and innovation in water efficient products and practices. These awards are intended to help foster a nationwide ethic of water efficiency, as well as to inspire, motivate, and recognize efforts to improve water efficiency. This program will enable EPA to document ''best practices'', share information, encourage an ethic of water efficiency, and create a network of water efficiency leaders. Recognition will be given on the basis of persuasive community or organizational leadership in the area of water efficiency, originality and innovativeness, national/global perspective and implications, and overall improvements in water efficiency. Actual (as opposed to anticipated) results are preferred and applicants should be able to demonstrate the amount of water saved. Candidates may be from anywhere in the United States, they may work in either the public or the private sector, and they may be either self-nominated or nominated by a third party. The following sectors are encouraged to apply: Corporations and Industry, Water Utilities, Government, Non-Governmental Organizations, and Individuals. Water utilities may be public or privately owned. Government includes, for example, Local, State, Tribal, and Federal Agencies, and Military bases. In order to be considered, applicants must have a satisfactory compliance record with respect to environmental regulations and requirements. Applications will be judged by a panel of national water efficiency experts from a variety of sectors. The panelists will provide recommendations to EPA, who will then make the final decision. EPA reserves the right to contact nominees for additional information should it be deemed necessary.

To Apply: Send a one page description (single sided) of the water efficient project being nominated. Also send a completed application form found at *http://www.epa.gov/water/wel.*

DATES: Applications must be postmarked by August 29, 2008 in order to be considered.

ADDRESSES: If using Express or Overnight Mail: Bob Rose, U.S. Environmental Protection Agency, 1201 Constitution Avenue, EPA East, Room 3226L, Washington, DC 20460.

If using First Class U.S. Postal Service: Bob Rose, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 4101M, Washington, DC 20460.

If using e-mail: *rose.bob@epa.gov.*

Please only e-mail MS Word documents or PDF files. Also, please send a notice without any attachments indicating that a second e-mail with attachments will follow. Try to limit the file size to less than 3MB total.

Additional information on the recognition program is available at *http://www.epa.gov/water/wel.*

FOR FURTHER INFORMATION CONTACT: Bob Rose, Telephone: (202) 564–0322. E-mail: *rose.bob@epa.gov.*

Dated: July 3, 2008.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E8–15577 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8688–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit

filed by Association of Irritated Residents and Natural Resources Defense Council (''Plaintiffs'') in the United States District Court for the Northern District of California: *Association of Irritated Residents* v. *EPA*, No. CV 08–0227–SC (N.D. Cal.). Plaintiffs filed a deadline suit to compel the Administrator to take action under section 110(k) of the Act on three specific revisions to the state implementation plan (SIP) submitted by the State of California. The three SIP revisions include the 2003 State and Federal Strategy for the California State Implementation Plan, the 2004 San Joaquin Valley Extreme Ozone Attainment Demonstration Plan (''2004 San Joaquin Valley SIP''), and the 2003 Air Quality Management Plan for the South Coast Air Quality Management District (''2003 South Coast SIP''). Under the terms of the proposed consent decree, deadlines have been established for EPA to take action on the three California SIPs. If EPA fulfills its obligations, Plaintiffs have agreed to dismiss this suit with prejudice.

DATES: Written comments on the proposed consent decree must be received by *August 8, 2008.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2008–0487, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5598; fax number (202) 564–5603; e-mail address: *tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking to compel action by EPA under section 110(k) of the CAA on the following three SIP revisions submitted by the State of California: The 2003 State and Federal Strategy for the California State Implementation Plan, the 2004 San Joaquin Valley SIP, and the 2003 South Coast SIP. On February 13, 2008, the State of California withdrew specific elements of the 2003 State and Federal Strategy for the California State Implementation Plan that relate to the South Coast Air Basin. On March 6, 2006, the State of California submitted a SIP revision that updates and replaces chapter 4 of the 2004 San Joaquin Valley SIP.

Under the terms of the proposed consent decree, EPA will sign for publication in the **Federal Register** notices of the Agency's proposed actions pursuant to CAA section 110(k) on the remaining elements of the 2003 State and Federal Strategy for the California State Implementation Plan, the 2004 San Joaquin Valley SIP, and the 2003 South Coast SIP by October 15, 2008. EPA will sign notices of the Agency's final actions pursuant to CAA section 110(k) on the three plans by January 15, 2009.

Under the proposed consent decree, EPA actions on any amendments to the three plans submitted by the State of California, including the replacement of chapter 4 of the 2004 San Joaquin Valley SIP submitted on March 6, 2006, shall satisfy the obligations to act on the plans as long as EPA meets the deadlines specified in the paragraph above. Also, if the State of California rescinds its February 13, 2008 letter withdrawing specific elements of the 2003 State and Federal Strategy for the California State Implementation Plan that relate to the South Coast Air Basin by August 1, 2008, then EPA must act on the plan in its entirety, once again, by the dates specified in the paragraph above. If the State of California rescinds its February 13, 2008 letter after August 1, 2008 but prior to final action on the applicable plans, then the parties will negotiate a revised schedule for the applicable plans.

In the proposed consent decree, EPA agrees that, pursuant to CAA section 304(d), 42 U.S.C. 7604(d), Plaintiffs are both eligible and entitled to recover their costs of litigation in this action, including reasonable attorneys' fees, incurred prior to entry of the consent decree. The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA takes final action on the three plans.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2008–0487) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public

docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 2, 2008.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E8–15578 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0046; FRL–8371–2]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 8, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest, by one of the following methods:

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

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 8E7353	EPA–HQ–OPP–2008–0478
PP 8E7355	EPA–HQ–OPP–2008–0474
PP 8E7359	EPA–HQ–OPP–2008–0481
PP 8E7364	EPA–HQ–OPP–2008–0475
PP 7F7295	EPA–HQ–OPP–2008–0490
PP 1F6299	EPA–HQ–OPP–2008–00275

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Tolerances

1. *PP 1F6299.* (EPA–HQ–OPP–2008–0275). Bayer CropScience, 2 T.W., Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-ureidosulfonyl]benzoate, sodium salt, in or on food commodities wheat, grain at 0.02 parts per million (ppm); wheat, forage at 0.06 ppm; wheat, straw at 0.05 ppm; and wheat, hay at 0.05 ppm. An enforcement procedure is available whereby extractable residues of iodosulfuron-methyl-sodium and AE F075736 are removed from crops by blending with acetonitrile. After blending, the extract is filtered, reduced in volume and partitioned with hexane to remove oils. The partially cleaned-up extract is evaporated to dryness under reduced pressure; dissolved in dichloromethane and further cleaned-up on a series of solid phase extraction columns, first, silica gel, then Bond Elut(tm) ENV, and finally on polyamide 6S. The extract is again concentrated to dryness and reconstituted in either 70/30 deionized water/acetonitrile for analysis by high pressure liquid chromatography/mass spectrometry (HPLC-MS/MS), or in 50/50 deionized water/acetonitrile for analysis by HPLC/ultraviolet (HPLC/UV). Contact: Hope Johnson, telephone number: (703) 305–5410; e-mail address: *johnson.hope@epa.gov*.

2. *PP 7F7295.* (EPA–HQ–OPP–2008–0490). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27409, proposes to establish a tolerance for residues of the fungicide fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile, in or on food commodity raisins at 1.9 ppm. Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities, and is currently the enforcement method for fludioxonil. This method has also been forwarded to the Food and Drug Administration for inclusion into PAM II. An extensive database of method validation data using this method on various crop commodities is available. Contact: Lisa Jones, telephone number: (703) 308–9424; e-mail address: *jones.lisa@epa.gov*.

Amendment to Existing Tolerance

1. *PP 8E7353.* (EPA–HQ–OPP–2008–0478). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to amend the tolerances in 40 CFR 180.518 for residues of the fungicide pyrimethanil, 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine, in or on food commodities revising the existing tolerance for the fruit, stone, group 12, except cherry at 3.0 ppm to fruit, stone, group 12 at 10 ppm; and revising the tolerance designation for fruit, citrus, group 10 (postharvest) at 10 ppm by excluding lemons to read fruit, citrus, group 10, except lemons (postharvest) at 10 ppm. Also, adding a separate tolerance for lemon at 11.0 ppm. The plant metabolism studies indicated that analysis for the parent compound, pyrimethanil was sufficient to enable the assessment of the relevant residues in crop commodities. For the stone fruit group, peaches, plums, and sweet cherries were analyzed as representative

crops. For peaches, plums, and sweet cherries pyrimethanil was extracted by homogenization with acetone, the extract acidified and washed with hexane and basified to enable solvent partition (ethyl acetate and hexane). Final clean-up was by silica SPE, with determination by gas chromatography with mass selective detection. The validated sensitivity of the method is 0.05 ppm for pyrimethanil, which allows for the detection and measurement of residues in or on stone fruits at or above the proposed tolerance level. Contact: Susan Stanton, telephone number: (703) 305–5218; e-mail address:*stanton.susan@epa.gov*.

New Exemption from Tolerances

1. *PP 8E7355*. (EPA–HQ–OPP–2008–0474). Huntsman, 10003 Woodloch Forest Drive, The Woodlands, TX 77380; Dow AgroSciences L.L.C., 9330 Zionsville Road, Indianapolis, Indiana 46268; Nufarm Americas Inc., 150 Harvester Drive Suite 220, Burr Ridge, Illinois, 60527; BASF, 26 Davis Drive, Research Triangle Park, NC 27709; Stepan Company, 22 W. Frontage Road, Northfield, IL 60093; Loveland Products Inc., PO Box 1286, Greeley, CO 80632; and Rhodia Inc., CN 1500, Cranbury, New Jersey, 08512, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of ethylene glycol (CAS 107–21–1), diethylene glycol (CAS 111–46–6), diethylene glycol monoethyl ether (CAS 111–90–0), and diethylene glycol monobutyl ether (CAS 112–34–5) when used as a pesticide inert ingredient as a solvent, stabilizer and/or antifreeze within pesticide formulations/products. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e–mail address: *samek.karen@epa.gov*.

2. *PP 8E7359*. (EPA–HQ–OPP–2008–0481). Dow AgroSciences, LLC; 9330 Zionsville Road, Indianapolis, IN 46268, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of *N,N*′-ethylenebis[*N*-(carboxymethyl)]glycine compound with 1,1′1″-nitrilotripropan-2-ol (EDTA–TIPA)(CAS Reg. No. 67952–36–7) which is a salt comprised of triisopropanolamine (TIPA) (CAS Reg. No. 122–20–3) and ethylenediaminetetraacetic acid (EDTA) (CAS Reg. No. 60–00–4) when used as, but not limited to a sequestering or chelating agent as an inert ingredient in pesticide formulations with limits: up to 5% of pesticide formulation. Per the EPA 2004 Memorandum on EDTA Tolerance Reassessment, EDTA and two other EDTA salts have already been exempted from tolerance under 40 CFR 180.910. It is also requested that the EDTA–TIPA salt be added to the approximately 20 or more EDTA compounds already approved for non–food pesticide applications. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

3. *PP 8E7364*. (EPA–HQ–OPP–2008–0475). Celanese Ltd., 1601 West LBJ Freeway, Dallas, TX 75234, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance under 40 CFR 180.960 for residues of acetic acid ethenyl ester, polymer with sodium 2-methyl-2-[(1-oxo-2-propene-1-yl) amino]-1-peropanesulfonate (1:1), hydrolyzed (CAS Reg. No. 924892–37–5) in or on food commodities when used as a pesticide inert ingredient in pesticide formulations. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Karen Samek, telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–15334 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0489; FRL–8372–1]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is issuing this notice to cancel a September 9 - 11, 2008 meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel. The meeting was announced in the **Federal Register** of June 18, 2008.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2045; fax number: (202) 564-8382; e-mail address: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION: The September 9 - 11, 2008 meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (FIFRA) to consider and review an evaluation of the common mechanism of action of pyrethroid pesticides has been cancelled. The meeting was originally announced in the **Federal Register** of June 18, 2008 (73 FR 34736) (FRL–8369–1). For further information, please contact the Designated Federal Official listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 30, 2008.

Gary E. Timm,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E8–15360 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0274; FRL–8373–5]

FIFRA Scientific Advisory Panel; Notice of Rescheduled Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will now be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Agency's Evaluation of the Toxicity Profile of Chlorpyrifos. This meeting was originally scheduled for July 15–18, 2008.

DATES: The meeting will be held on September 16–18, 2008, from approximately 9:00 a.m. to 5:30 p.m, Eastern Time.

Comments. The Agency encourages that written comments be submitted by September 9, 2008 and requests for oral comments be submitted by September 11, 2008. However, written comments and requests to make oral comments may be submitted until the date of the meeting. Anyone submitting written comments after September 9, 2008 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of the FIFRA SAP for this meeting were previously solicited by the Agency on April 18, 2008 (73 FR 21125) (FRL 8360–8). Additional nominations of candidates to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before July 23, 2008.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Holiday Inn – Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, Virginia 22209. Telephone: (703) 807–2000.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0274, by one of the following methods:

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

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

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

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2008–0274. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as an ad hoc member of the FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–564–0130; fax number: 202–564–8382; e-mail addresses: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection

Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2008–0274 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than September 9, 2008, to provide FIFRA SAP the time necessary to consider and review the written comments. However, written comments are accepted until the date of the meeting. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies. Anyone submitting written comments after September 9, 2008 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the extent of written comments for consideration by FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than September 11, 2008, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas:

1. Organophosphate pesticides,
2. Acetylcholinesterase inhibition,
3. Chlorpyrifos metabolism including paraoxonase 1 (PON 1) expression and activity,
4. Cholinergic and non-cholinergic modes/mechanisms of toxicity,
5. Developmental neurotoxicity,
6. Physiologically-based pharmacokinetic modeling,
7. Interpretation of metabolite data from human samples,
8. Mode of action framework,
9. Human relevance framework,
10. Human health risk assessment,
11. Epidemiology, and
12. IPSC WHO Guidance on Chemical Specific Adjustment Factors.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before July 23, 2008. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel.

In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 15 to 20 ad hoc scientists. FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to

assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Scientific Advisory Panel. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

In the last decade, there has been a substantial amount of research on the human health effects of chlorpyrifos. The Agency is currently updating the hazard identification and hazard characterization for chlorpyrifos, in part, by evaluating aspects of this research. The Agency is particularly focusing on studies that evaluate the effects of chlorpyrifos on infants and children from *in utero* and/or post-natal exposures and on studies that evaluate population variability with respect to response to chlorpyrifos. This review will encompass selected human epidemiological data, *in vivo* data in laboratory animals and in vitro studies. The Agency will be seeking comments from the SAP on the following areas:

1. Interpretation of recent epidemiological studies associating *in utero* and/or post-natal chlorpyrifos exposure with health outcomes;

2. Aspects of chlorpyrifos metabolism, such as differences in paraoxonase 1 (PON 1) expression and activity, which affects population variability with respect to the effects of chlorpyrifos and its oxon metabolite;

3. Cholinergic and non-cholinergic modes/mechanisms of toxicity relevant to evaluating hazard and risk to infants and children.

As part of this review, the Agency is evaluating the relevance of animal studies conducted by different routes of administration (e.g., gavage or subcutaneous injection) for conducting human health risk assessment to different age groups and by different exposure pathways.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to the FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by mid-August 2008. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 30, 2008.

Gary E. Timm,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E8–15440 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0263; FRL–8371–8]

Fenvalerate; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of products containing the pesticide fenvalerate, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an April 30, 2008 **Federal Register** Notice of Receipt of Requests from the fenvalerate registrants to voluntarily cancel all their fenvalerate product registrations. Fenvalerate is a synthetic pyrethroid insecticide which is used to control insects and related organisms, mollusks, fouling organisms and miscellaneous invertebrates on agricultural, pet care, domestic home and garden (domestic), and commercial/industrial/food and non-food/mosquito abatement (commercial) sites. These are the last fenvalerate products registered for use in the United States. In the April 30, 2008 notice, EPA indicated that it would issue an order implementing the cancellations unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the fenvalerate products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8025; fax number: (703) 308-8005); e-mail address: livingston.wilhelmena@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0263. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of all end-use fenvalerate products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—FENVALERATE PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
538-166	Scotts House Plant Insect Spray
538-173	Chinch Bug Control
9444-120	Total Release Fogger
10806-61	Contact Roach and Ant Killer VI
10806-73	Contact Lawn Spray Concentrate for Fleas
10806-74	Contact Lawn Spray Concentrate for Fleas II
10806-87	Contact Roach and Ant Killer IX
10806-93	Contact Ornamental Gypsy Moth and Japanese Beetle Spray
10806-94	Contact Roach and Ant Killer XI
10807-150	Misty Fire Ant Injector
28293-151	Unicorn Flea and Tick Lawn Spray No.1
28293-159	Unicorn RTU Home and Premise Spray
28293-162	Unicorn Zap Insecticide
28293-163	Unicorn Flush-Out Spray
28293-164	Unicorn Household Insecticide II
28293-217	Unicorn Residual Spray #4

TABLE 2.—REGISTRANTS OF CANCELED FENVALERATE PRODUCTS

EPA Company Number	Company Name and Address
538	The Scotts Company 14111 Scottslawn Road Marysville, Ohio 43041
9444	Waterbury Companies, Inc. 64 Avenue of Industry Waterbury, Connecticut 06705
10806	Contact Industries 641 Dowd Avenue Elizabeth, NJ 07201
10807	Amrep, Inc. 990 Industrial Park Drive Marietta, Georgia 30062

TABLE 2.—REGISTRANTS OF CANCELED FENVALERATE PRODUCTS—Continued

EPA Company Number	Company Name and Address
28293	Phaeton Corporation P.O. Box 290 Madison, Georgia 30650

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period, EPA received no comments in response to the April 30, 2008 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of fenvalerate.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of fenvalerate registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the fenvalerate product registrations identified in Table 1 of Unit II. are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

Registrants may sell and distribute existing stocks for 1 year from the date of the cancellation request. The products may be sold, distributed, and used by people other than the registrant until existing stocks have been

exhausted, provided that such sale, distribution and use complies with the EPA-approved label and labeling of the product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 25, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–15314 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0506; FRL–8370–6]

Registration Review; Antimicrobial Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before October 7, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

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

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

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Chemical Review Manager as identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not

contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Oxazolidine-E Case 5027	EPA–HQ–OPP–2008–0404	Eliza Blair, (703) 308–7279, *blair.eliza@epa.gov*
Caprylic Acid Case 5028	EPA–HQ–OPP–2008–0477	ShaRon Carlisle, (703)308–6427, *carlisle.sharon@epa.gov*

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides, antimicrobials and pests.

Dated: June 27, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8–15443 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8689–1]

State Innovation Grant Program, Preliminary Notice and Request for Input on the Development of a Solicitation for Proposals for 2009 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency), National Center for Environmental Innovation (NCEI) is giving preliminary notice of its intention to solicit pre-proposals for a 2009 grant program to support innovation by state environmental agencies—the ''State Innovation Grant Program.'' The Agency is also seeking input from state environmental regulatory agencies on the topic areas for the solicitation. In addition, EPA is asking each state environmental regulatory agency to designate a point of contact speaking on behalf of management (in addition to the Commissioner, Director, or Secretary) who will be the point of contact for further communication about the upcoming solicitation. If your point of contact from previous State Innovation Grant solicitations is to be your contact for this year's competition, there is no need to send that information again, as all previously designated points of contact will remain on our notification list for this year's competition. EPA anticipates publication of a Solicitation Announcement of Federal Funding Opportunity on the Federal government's grants opportunities Web site (*http://www.grants.gov*) to announce the availability of the next solicitation within 60 days.

DATES: State environmental regulatory agencies will have 30 days from the date of this pre-announcement notice in the **Federal Register** publication until August 8, 2008 to respond with: Suggestions for specific topics that should be included under the general subject area of ''Innovation in Environmental Permitting Programs'' (*e.g.*, topics with 1–2 paragraphs description) for the next solicitation; and point of contact information for the person within the state environmental regulatory agency (in addition to Commissioner, Director, or Secretary) who will be designated to receive future notices about the State Innovation Grant competition. We will automatically transmit notice of availability of the solicitation to people in state agencies identified for previous solicitations.

ADDRESSES: We encourage e-mail responses. Information should be submitted in writing via e-mail to: *innovation_state_grants@epa.gov*; or fax to ''State Innovation Grant Program'' at (202) 566–2220. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Sherri Walker at (202) 566–2186.

EPA will acknowledge all responses it receives to this notice. If you have not received an acknowledgment from EPA within three (3) days of the end of the notice period, please send an e-mail to: *innovation_state_grants@epa.gov* or call Sherri Walker at (202) 566–2186. Failure to do so may result in your information or comments not being received by the deadline. EPA will respond to all questions in writing, and all questions and responses will be posted on the EPA State Innovation Grant Web site at *http://www.epa.gov/innovation/stategrants.* State agencies are advised to monitor this Web site for information posted in response to questions received prior to and during the competition period.

SUPPLEMENTARY INFORMATION:

Background: In April 2002, EPA issued its plan for future innovation efforts, published as *Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA* (EPA 100–R–02–002; *http://www.epa.gov/innovation/pdf/strategy.pdf*). EPA's *Innovation Strategy* presents a framework for environmental innovation consisting of four major elements:

1. Strengthening EPA's innovation partnership with states and tribes;
2. Focusing on priority environmental issues;
3. Diversifying environmental protection tools and approaches; and
4. Fostering more ''innovation-friendly'' systems and organizational cultures.

The State Innovation Grant Program strengthens EPA's partnership with the states by supporting state innovation compatible with EPA's *Innovation Strategy*. EPA wants to encourage states to build on previous experience (theirs and others) to undertake strategic innovation projects that promote larger-scale models with potential for broader use for ''next generation'' environmental protection that promise better environmental outcomes and other beneficial results. EPA is interested in funding projects that: (i) Go beyond a single facility experiment and provide change that is ''systems-oriented'' (ii) provide better results from a program, process, or sector-wide innovation; and (iii) promote integrated (multi-media) environmental management with a high potential for transfer to other states, U.S. territories, and tribes.

Since 2002, EPA has sponsored six State Innovation Grant Program competitions that asked for State project pre-proposals that supported the general theme of innovation in environmental permitting. We interpret this theme broadly to include alternatives to permitting and the establishment of incentives to go beyond compliance with permit requirements. To date, the program has supported projects primarily in three strategic focus areas: Application of the Environmental Results Programs (ERP) model, state performance-based environmental leadership programs similar to the National Environmental Performance Track (PT) Program, and the application of Environmental Management Systems (EMS) and other integration tools in permitting. EPA's focus on a small number of topics within this general subject area effectively concentrates the limited resources available for greater strategic impact.

Thirty-eight awards to States have been made from the six prior competitions and information on those projects can be found on the EPA Web site at, *http://www.epa.gov/innovation/stategrants/projects.htm.* These projects received collectively over 7 million dollars in assistance. The assistance agreement awards for these projects were made to State environmental

regulatory agencies and most recently to a commission within a state with a re-delegated authority to administer an environmental permitting program. Among the grant projects, including those with pending awards: Eighteen (18) were provided for development of Environmental Results Programs, nine (9) were related to Environmental Management Systems and permitting, nine (9) were to enhance performance-based environmental leadership programs, two (2) were for watershed-based permitting, two (2) were for integrated permitting approaches, and one (1) was for streamlining a storm water permit program using an innovation in information technology, applying geographic information systems (GIS) and a web-based portal to a permit application and screening process. Some of the projects funded fit into more than one category (*e.g.*, combination projects of ERP with PT, or ERP with EMS). For information on prior State Innovation Grant Program solicitations and awards, please see the EPA State Innovation Grants Web site at *http://www.epa.gov/innovation/stategrants.*

Agencies That Are Eligible to Compete for the State Innovation Grant: Historically, we have limited the competition to state agencies with the primary delegations from EPA for permitting programs. We are aware that some state agencies re-delegate their authorities for permitting programs to regional, county, or municipal agencies. Last year, EPA clarified the eligibility definition in the solicitation to include regional, county, or municipal agencies with re-delegated permitting authority for federal environmental permitting programs. Again this year we will consider these agencies for awards providing that the principal state environmental regulatory agency will be an active member of the project team. Agencies are encouraged to partner with other governmental agencies or non-governmental organizations within the State (or outside of their state) that have complementary environmental mandates or symbiotic interests (*e.g.*, energy, agriculture, natural resources management, transportation, public health).

EPA will accept only one pre-proposal in the competition per state. An exception to that limit is anticipated where, as in previous years, a multi-state or state-tribal proposal will be accepted in addition to an individual state proposal. We believe it likely that we will limit this exception so that a state may appear in no more than one multi-state or state-tribal proposal in addition to its individual proposal. States are also encouraged to partner with other states and American Indian tribes to address cross-boundary issues, to encourage collaborative environmental partnering within industrial sectors or in certain topical areas (*e.g.*, agriculture), and to create networks for peer-mentoring. EPA regrets that because of the limitation in available funding it is not yet able to open this competition to American Indian tribal environmental agencies but we strongly encourage tribal agencies to join with adjacent states in project proposals. EPA is interested in hearing from regional, county, or municipal agencies about their interest, capacity, and the likelihood of commitment from the principal statewide regulatory entity to assist a potential project.

Proposed General Topic Areas for Solicitation: To increase the likelihood of strategic impact with what we anticipate to be limited funds, EPA proposes to continue with the general theme of ''innovation in permitting,'' and additionally to continue with the focus on the three strategic topic areas similar to the last competition: (1) Projects that support the development of state Environmental Results Programs (ERP); (2) projects that implement performance-based environmental leadership programs by states, similar to the National Environmental Performance Track Program particularly including the development and implementation of incentives; (3) projects which involve the application of Environmental Management Systems (EMS), including those that explore the relationship of EMS to permitting (see EPA's *Strategy for Determining the Role of EMS in Regulatory Programs* at *http://www.epa.gov/ems* or *http://www.epa.gov/ems/docs/EMS_and_the_Reg_Structure_41204Fpdf*), or otherwise support integrated or multimedia strategies. Connected to this, we are also interested in the application of lean manufacturing tools and techniques for improvement (*http://www.epa.gov/innovation/lean/*) in environmental performance and energy efficiency. These proposals may involve a linkage to permitting (*e.g.*, reducing emissions to avoid exceeding permit limits).

EPA intends to support state projects that involve innovation in environmental permitting (including alternatives to permitting) related to one of the EPA *Innovation Strategy's* priority environmental areas, or to other priority areas identified previously by individual states in collaboration with EPA in a formal state-EPA agreement such as a Performance Partnership Agreement (PPA). EPA is interested in projects that focus on priority environmental issues, such as reducing greenhouse gases (*e.g.*, energy efficiency), reducing smog, restoring and maintaining water quality, and reducing the cost of water and wastewater infrastructure.

Request for Input on Solicitation Topics and Priorities: EPA encourages communication from States and other parties about these three thematic areas mentioned here and other areas potentially ripe for innovation. EPA is asking for state environmental regulatory agencies and other interested parties to provide brief (about 1 paragraph) suggestions about additional innovation topics within the subject of innovation in permitting for possible inclusion in the upcoming solicitation. In addition to the three topic areas (ERP, PT, and EMS and integrated approaches), EPA will continue to encourage project proposals that address the four major elements (*i.e.*, strengthening innovation partnerships; focusing on priority environmental issues; diversifying environmental protection tools and approaches; and fostering ''innovation-friendly'' systems and organizational cultures) and use tools (*i.e.*, incentives, information resources, results-based goals and measures, etc.) highlighted in the Innovation Strategy. EPA may also contemplate projects otherwise related to the general theme of innovation in permitting, in particular as they may address EPA regional and state environmental priorities.

To date, the State Innovation Grant Program has supported the application of ERP for the following sectors:

- Auto body/ auto repair/ auto salvage sectors,
- Underground storage tanks (UST),
- Dry cleaning operations,
- Printing,
- Animal feedlot operations,
- Injection well management,
- Oil and gas production,
- Food preparation facilities,

As well as a multi-sector application targeted at storm water management.

We are interested in continuing the EMS and permit integration theme, but may consider introduction of greater latitude under this theme such as the integration of EMS into other business systems such as lean manufacturing or six sigma (*http://www.epa.gov/innovation/lean/*). We also anticipate a continued interested in projects that promote the development of state performance track-like projects, perhaps including ''on-ramp'' approaches for potential environmental leaders that require upfront compliance assistance.

Potential applicants are advised outright that State Innovation Grants

will not be awarded for the development or demonstration of new environmental technologies, nor will they be awarded for the development of information systems or data or projects that have as a primary focus the upgrading of information technology systems, unless there is a clear link to innovation in specific permitting programs.

Projects will be much less likely to be funded through this State Innovation Grant if agency resources pertinent to the topic are already available through another EPA program. Project selections and awards will be subject to funding availability. State environmental regulatory agencies and other respondents should send their suggestions to EPA by e-mail or fax as described in the ''Addresses'' section above.

Request for Input on Diffuse Delegations and Designation of a Primary Point of Contact: One of the principal goals of the State Innovation Grant program is the testing of an integrated (multi-media) innovation with the potential for replication or broader application for other sectors, or in permitting programs in other state or tribal agencies. Because of the limitation of funds we have historically limited the competition to state agencies with a primary delegation from EPA for permitting programs. We have concerns that opening the competition to regulatory entities at lower levels (*e.g.*, air control boards, water quality management districts, counties or municipalities) may limit the range of results and the potential for transferability of innovative approaches. We recognize, however, that in some instances states have re-delegated programs to regional or local agencies and that those agencies may manage substantial permitting programs. EPA is seeking comment from states that may have re-delegated several authorities to other governing regional or municipal agencies or boards rather than in one centralized state environmental regulatory agency and from the boards and districts on how we might better accommodate those delegations in this program and take advantage of the expertise in those programs while maintaining the strategically important goal of testing innovation for broad application and transferability. EPA is not seeking comments on our widening of eligibility to agencies with re-delegated authority. We are seeking to determine how many states and entities with re-delegated authority may be anticipating submitting a pre-proposal. Also, we are seeking specific feedback on topical input that these groups may want to give us.

EPA asks that each state environmental regulatory agency designate a primary point-of-contact who we will add to the EPA notification list for further announcements about the State Innovation Grant Program. For point of contact information, please provide: name, title, department and agency, street or post office address, city, state, zip code, telephone, fax number, and e-mail address. If your point of contact from previous State Innovation Grant solicitations is to be your contact for this year's competition, there is no need to send that information again, as all previously designated points of contact will remain on our notification list for this year's competition. We are asking that any new name be submitted with the knowledge and approval of the highest levels of management within an Agency (Commissioner, Director, Secretary, or their deputies) within 30 days after publication of this notice in the **Federal Register**. Please submit this information to EPA by mail, fax, or e-mail prior to August 8, 2008 in the following manner.

By e-mail to: Innovation_State_Grants@EPA.gov.

By fax to: State Innovation Grant Program; (202) 566–2220.

We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Sherri Walker at (202) 566–2186. For point-of-contact information, please provide: name, title, department and agency, mailing address (street or P.O. Box), city, state, zip code, telephone, fax number, and e-mail address. EPA will acknowledge all responses it receives to this notice.

Opportunity for Dialogue: Between now and the initiation of the competition with the release of the solicitation, communication with potential applicants is allowed. This communication may include helping potential applicants determine whether the applicant itself is eligible or if the scope of an applicant's potential project is suitable for funding, as well as responding to general requests for clarification of the notice. To ensure an equal opportunity for all potential applicants, responses to questions that come to us during the period between this pre-announcement and the release of the solicitation along with helpful resource materials will be posted on the State Innovation Grant Web site at *http://www.epa.gov/innovation/stategrants.* States are also invited to communicate with NCEI about ideas for future competition themes by contacting the EPA Headquarters contact listed below. The contacts for the EPA Regions and the EPA HQ National Center for Environmental Innovation are as follows:

Anne Leiby or Josh Secunda, U.S. EPA Region 1, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1076 or (617) 918–1736 *leiby.anne@epa.gov* or *secunda.josh@epa.gov States:* CT, MA, ME, NH, RI, VT.

Jennifer Thatcher, U.S. EPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007–1866, (212) 637–3593, *thatcher.jennifer@epa.gov, States & Territories:* NJ, NY, PR, VI.

Michael Dunn, U.S. EPA Region 3, 1650 Arch Street (3EA40), Philadelphia, PA 19103, (215) 814–2712, *dunn.michael@epa.gov, States:* DC, DE, MD, PA, VA, WV.

LaToya Miller, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–9885, *miller.latoya@epa.gov, States:* AL, FL, GA, KY, MS, NC, SC, TN.

Marilou Martin, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–9660, *martin.marilou@epa.gov, States:* IL, IN, MI, MN, OH, WI.

Craig Weeks, U.S. EPA Region 6, Fountain Place, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–7505, *weeks.craig@epa.gov, States:* AR, LA, NM, OK, TX.

Wendy Lubbe, U.S. EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7551, *lubbe.wendy@epa.gov, States:* IA, KS, MO, NE.

Jack Hidinger, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6387, *hidinger.jack@epa.gov, States:* CO, MT, ND, SD, UT, WY.

Loretta Barsamian, U.S. EPA Region 9, 75 Hawthorne Street (SPE–1), San Francisco, CA 94105, (415) 947–4268, *barsamian.loretta@epa.gov, States and Territories:* AS, AZ, CA, GU, HI, NV.

Bill Glasser, U.S. EPA Region 10, 1200 Sixth Avenue (ENF–T), Seattle, WA 98101, (206) 553–7215, *glasser.william@epa.gov, States:* AK, ID, OR, WA.

Headquarters Office: Sherri Walker, U.S. EPA (MC 1807T), National Center for Environmental Innovation, State Innovation Grants Program, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–2186, (202) 566–2220 fax.

Opportunity for Pre-Competition Briefings and Addressing Questions: In addition, prior to this year's solicitation,

we are planning to host a series of informational meetings and opportunities for question and answer (Q&A) sessions via teleconference calls. These conference calls will enable us to offer two-hour streamlined informational sessions to all States prior to our solicitation, and will allow us to answer any questions that the States have prior to the competition, in keeping with Federal requirements that we afford assistance fairly in a competition process. Specific conference call logistics and grant resource information will be provided to each Region as well as being posted on our Web site at *http://www.epa.gov/innovation/stategrants.* Pre-competition briefing summaries and all other resource materials will be posted on the Web site at *http://www.epa.gov/innovation/stategrants.* Through this effort, we are hoping to encourage individual States, State-led teams, or other eligible applicants (*e.g.*, regional, county, or municipal agencies with delegated authority for federal environmental permitting programs) to submit well-developed pre-proposals that effectively describe in particular how their project will achieve measurable environmental results.

Dated: July 2, 2008.

Elizabeth Shaw,

Office Director, National Center for Environmental Innovation.

[FR Doc. E8–15580 Filed 7–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0037; FRL–8371–4]

Trichoderma Species and Linalool Registration Review Proposed Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decisions for the pesticides cases *Trichoderma* species and linalool and opens a public comment period on the proposed registration review decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before September 8, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) numbers EPA–HQ–OPP–2006–0245 for *Trichoderma* species and EPA–HQ–OPP–2006–0356 for Linalool, by one of the following methods:

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

Instructions: Direct your comments to docket ID numbers and the regulatory contacts listed under Table 1 for each of the cases to which you are submitting a comment. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: For information about the biopesticides included in this document, contact the specific Regulatory contact, as identified in the Table in Unit II.A. for the biopesticide of interest. The mailing address and additional contact information is Biopesticides and Pollution Prevention Division (7511P); Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8712; fax number: (703) 308–7026.

For general questions on the registration review program, contact Peter Caulkins, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6550; fax number: (703) 308–8090; e-mail address: *caulkins.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

This notice opens a 60–day public comment period on the subject proposed registration review decisions. The Agency is proposing registration review decisions for the pesticide cases shown in the following Table.

TABLE 1.—REGISTRATION REVIEW DOCKETS: PROPOSED FINAL DECISIONS

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Contact name, Phone Number, E-mail Address
Linalool; Case 6058	EPA–HQ–OPP–2006–0356	Stephen Morrill (703) 308–8319 *morrill.stephen@epa.gov*
Trichoderma species; Case 6050	EPA–HQ–OPP–2006–0245	Shanaz Bacchus (703) 308–8097 *bacchus.shanaz@epa.gov*

The dockets for registration review of these pesticide cases include earlier documents related to the registration review of the subject cases. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan (PWP), for public comment. A Final Work Plan (FWP) was posted to the docket following public comment on the initial docket. The documents in the initial docket described the Agency's rationales for not conducting new risk assessments for the registration review of the *Trichoderma* species. A new ''down the drain'' exposure risk assessment was considered for linalool in response to the comments received to the initial docket. A preliminary assessment indicated that a full assessment would not provide useful information, since the annual usage of linalool is so low. Thus the Agency concluded the there is no incremental risk as a result of exposure when linalool is used as labeled. These proposed registration review decisions now included in the dockets continue to be supported by those rationales included in documents in the initial dockets. Following public comment, the Agency will issue a final registration review decision for each case.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1996 required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006 and appears at 40 CFR 155.40 The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA as amended by PRIA in 2007 requires EPA to complete registration review decisions by October 1, 2022 for all pesticides registered as of October 1, 2007. The registration review final rule provides for a minimum 60–day public comment period for all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision(s). All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Dockets for *Trichoderma* species and linalool. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. The Agency will carefully consider all comments received by the

closing date and will provide a Response to Comments Memorandum in the Dockets and www.regulations.gov. The final registration review decisions will explain the effect that any comments have had on the decisions.

Background on the registration review program is provided at: http://www.epa.gov/oppsrrd1/registration_review/. Quick links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm/*. Additional information about biopesticides can be obtained by an alphabetical search of the Biopesticide Active Ingredient Fact Sheets on *http://www.epa.gov/oppbppd1/biopesticides/ingredients/index.htm*

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

FIFRA Section 3(g) and 40 CFR 155.40 provide authority for this action.

List of Subjects

Environmental protection, Pesticides, and pests, Registration review.

Dated: June 30, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs

[FR Doc. E8–15442 Filed 7–8–08; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 2, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, Performance and Evaluation Records Management Division, Office of the Managing Director, at (202) 418–2918 or at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0031.

OMB Approval Date: June 23, 2008.

Expiration Date: June 30, 2011.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Forms 314 and 315.

Estimated Annual Burden: 12,210 responses; 1–5 hours per response; 18,790 hours total per year.

Annual Cost Burden: $33,989,570.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Instructions to Forms 314 and 315 have been revised to reflect the new ownership limits adopted in the Third Report and Order and Second Notice of Proposed Rulemaking, FCC 07–204 (released December 11, 2007), namely, that an entity may own only one LPFM station. By amending the Rules to permanently limit LPFM eligibility, the Commission is protecting the public interest in localism and fostering greater diversity of programming from community sources. Forms 314 and 315 have also been revised to reflect the three-year holding period of an LPFM license, as adopted in the Third Report and Order, during which a licensee cannot transfer or assign a license, and must operate the station. That restriction will prevent entities from using the LPFM assignment and transfer process to undermine the Commission's LPFM policies and will ensure that the benefits to the public which were the basis for the license grant will be realized.

On December 18, 2007, the Commission adopted a Report and Order and Order on Reconsideration in its 2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules pursuant to section 202 of the Telecommunications Act of 1996, MB Docket No. 06–121, FCC 07–216. Section 202 requires the Commission to review its broadcast ownership rules every four years and determine whether any of such rules are necessary in the public interest. Further, section 202 requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest.

Consistent with actions taken by the Commission in the 2006 Quadrennial Regulatory Review, the following changes are made to Forms 314 and 315. The instructions to Forms 314 and 315 have been revised to include a reference to the 2006 Quadrennial Regulatory Review as a source of information regarding the Commission's multiple ownership attribution policies and standards. The language in section A, IV of Worksheet 3 in Forms 314 and 315 is revised. This worksheet is used in connection with section III, Item 6b of Form 314 and section IV, Item 8b of Form 315 to determine the applicant's compliance with the Commission's multiple ownership rules and cross-ownership rules set forth in 47 CFR 73.3555. The revisions to the worksheet account for changes made by the Commission in the 2006 Quadrennial Review to 47 CFR 73.3555(d), the Daily Newspaper Cross-Ownership Rule. The revised rule changes the circumstances under which an entity may own a daily newspaper and a radio station or television station in the same designated market area. In section B of Worksheet 3 of Form 314, the description of a ''Daily Newspaper'' is changed to comport to the definition of ''Newspaper'' contained in 47 CFR 73.3555(c)(3)(iii) that the Commission revised in the 2006 Quadrennial Regulatory Review. In section B of Worksheet 3 of Form 315, language from 47 CFR 73.3555(d) is added to assist applicants in their determination of compliance with the Daily Newspaper Cross-Ownership Rule. Therefore, 47 CFR 73.3555(d) (daily newspaper cross-ownership rule) states:

(1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with Sec. 73.183 or Sec. 73.186, encompassing the entire community in which such newspaper is published; or (ii) The predicted 1 mV/m contour for an FM station, computed in accordance with Sec. 73.313, encompassing the entire community in which such newspaper is published; or (iii) The Grade A contour of a TV station, computed in accordance with Sec. 73.684, encompassing the entire

community in which such newspaper is published.

(2) Paragraph (1) shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served by permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1).

(3) In making a finding under paragraph (2), there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1), provided that, with respect to a combination including a commercial TV station: (i) The station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and (ii) At least 8 independently owned and operated major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) In making a finding under paragraph (2), there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1) in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (3).

(5) In making a finding under paragraph (2), the Commission shall consider: (i) Whether the combined entity will significantly increase the amount of local news in the market; (ii) whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment; (iii) the level of concentration in the Nielsen Designated Market Area (DMA); and (iv) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

(6) In order to overcome the negative presumption set forth in paragraph (4) with respect to the combination of a major newspaper and a television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth above in paragraph (5) will inform this decision.

(7) The negative presumption set forth in paragraph (4) shall be reversed under the following two circumstances: (i) the newspaper or broadcast station is failed or failing; or (ii) the combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination. FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated. FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated. Due to the similarities in the information collected by these two forms, OMB has assigned both forms OMB Control Number 3060–0031.

47 CFR 73.3580 requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application. The Commission's actions in this proceeding did not revise this requirement.

OMB Control Number: 3060–0110.

OMB Approval Date: June 23, 2008.

Expiration Date: June 30, 2011.

Title: Application for Renewal of Broadcast Station License; Section 73.3555(d), Daily Newspaper Cross Ownership.

Form Number: FCC Form 303–S.

Estimated Annual Burden: 3,217 responses; 1–11.83 hours per response; 6,335 hours total per year.

Annual Cost Burden: $1,730,335.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: On December 18, 2007, the Commission adopted a Report and Order and Order on Reconsideration in its 2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules pursuant to section 202 of the Telecommunications Act of 1996, MB Docket No. 06–121, FCC 07–216. Section 202 requires the Commission to review its broadcast ownership rules every four years and determine whether any of such rules are necessary in the public interest. Further, section 202 requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest. Consistent with actions taken by the Commission in the 2006 Quadrennial Regulatory Review, changes are made to Form 303–S to account for revisions made to 47 CFR 73.3555(d), the Daily Newspaper Cross-Ownership Rule. The revised rule changes the circumstances under which an entity may own a daily newspaper and a radio station or television station in the same designated market area. In section III of Form 303–S, a new Question 7 is added which asks the licensee to certify that neither it nor any party to the application has an attributable interest in a newspaper that is within the scope of 47 CFR 73.3555(d). Instructions for this new question are added to Form 303–S, and include a reference to the 2006 Quadrennial Regulatory Review as a source of information regarding the Commission's newspaper/broadcast cross-ownership rule. Therefore, 47 CFR 73.3555(d) (daily newspaper cross-ownership rule) states:

(1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under

common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with Sec. 73.183 or Sec. 73.186, encompassing the entire community in which such newspaper is published; or (ii) The predicted 1 mV/m contour for an FM station, computed in accordance with Sec. 73.313, encompassing the entire community in which such newspaper is published; or (iii) The Grade A contour of a TV station, computed in accordance with Sec. 73.684, encompassing the entire community in which such newspaper is published.

(2) Paragraph (1) shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served by permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1).

(3) In making a finding under paragraph (2), there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1), provided that, with respect to a combination including a commercial TV station, (i) The station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and (ii) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) In making a finding under paragraph (2), there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1) in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (3).

(5) In making a finding under paragraph (2), the Commission shall consider: (i) Whether the combined entity will significantly increase the amount of local news in the market; (ii) whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment; (iii) the level of concentration in the Nielsen Designated Market Area (DMA); and (iv) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

(6) In order to overcome the negative presumption set forth in paragraph (4) with respect to the combination of a major newspaper and a television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth above in paragraph (5) will inform this decision.

(7) The negative presumption set forth in paragraph (4) shall be reversed under the following two circumstances: (i) The newspaper or broadcast station is failed or failing; or (ii) the combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination. FCC Form 303–S is used in applying for renewal of license for a commercial or noncommercial AM, FM or TV broadcast station and FM translator, TV translator or Low Power TV (LTV), and Low Power FM broadcast stations. It can also be used in seeking the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV, or LPTV station.

This collection also includes the third party disclosure requirement of 47 CFR Section 73.3580. This section requires local public notice of the filing of the renewal application. For AM, FM, and TV stations, these announcements are made on-the-air. For FM/TV Translators and AM/FM/TV stations that are silent, the local public notice is accomplished through publication in a newspaper of general circulation in the community or area being served.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–15584 Filed 7–8–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

July 2, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 8, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your

comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jerry Cowden via e-mail at *PRA@fcc.gov* or at 202–418–0447. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None.

Title: Information Collection Regarding Redundancy, Resiliency and Reliability of 911 and E911 Networks and/or Systems as set forth in the Commission's Rules (47 CFR 12.3).

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 74 respondents; 74 responses.

Estimated Time per Response: 105.3 hours (120 hours for local exchange carriers, 72 hours for commercial mobile radio service providers, and 40 hours for interconnected Voice over Internet Protocol service providers).

Frequency of Response: One-time reporting.

Obligation to Respond: Mandatory (47 CFR 12.3).

Total Annual Burden: 7,792 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

Nature and Extent of Confidentiality: These reports will contain sensitive data and, for reasons of national security and the prevention of competitive injury to reporting entities, Section 12.3 of the Commission's rules specifically states that all reports will be afforded confidential treatment. These reports will be shared pursuant to a protective order with only the following three entities, if the entities file a request for the information: The National Emergency Number Association, The Association of Public Safety Communications Officials, and The National Association of State 9–1–1 Administrators. All other access to these reports must be sought pursuant to procedures set forth in 47 CFR 0.461. Notice of any requests for inspection of these reports will be provided to the filers of the reports pursuant to 47 CFR 0.461(d)(3).

Needs and Uses: The Commission, in order to help fulfill its statutory obligation to make wire and radio communications services available to all people in the United States for the purpose of the national defense and promoting safety of life and property, released an Order (FCC 07–107) that adopted a rule requiring analysis of 911 and E911 networks and/or systems and reports to the Commission on the redundancy, resiliency and reliability of those networks and/or systems (47 CFR 12.3). It is critical that Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service. These analyses and reports on the redundancy, resiliency, and dependability of 911 and E911 networks and systems will further this goal. This requirement will serve the public interest and further the Commission's statutory mandate to promote the safety of life and property through the use of wire and radio communication. See 47 U.S.C. 151.

This rule obligates local exchange carriers (LECs), commercial mobile radio service (CMRS) providers that are required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules, and interconnected Voice over Internet Protocol (VoIP) service providers to analyze their 911 and E911 networks and/or systems and file a detailed report to the Commission on the redundancy, resiliency and reliability of those networks and/or systems. LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules are exempt from this rule. The reports are due 120 days from the date that the Commission or its staff announces activation of the 911/E911 network and system reporting process.

Description of Information Collection: The Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to implement and activate a process through which these reports will be submitted. The Bureau will collect these reports through a Web interface that will input the reports into an electronic database partitioned for each entity type subject to Section 12.3 of the Commission's rules (i.e., LECs, CMRS providers required to comply with section 20.18 of the Commission's rules, and interconnected VoIP service providers). Respondents that are subject to state regulations requiring the reporting of similar information may meet the requirements of section 12.3 by submitting the state report, provided that the state report includes the relevant information required by this section 12.3 information collection. The system will also allow users to provide additional information about the redundancy, resiliency and dependability of their 911 and E911 networks and systems. This data collection system will carefully restrict access to the data. Users will be able to input and see data for their company, but will not be able to see or input data for another company. The system will also allow users to input other information they may wish to provide about the redundancy, resiliency and dependability of their 911 and E911 networks and systems.

The Commission also delegated authority to the Bureau to establish the specific data that will be required. The following is the information that the Bureau will require from LECs, CMRS providers and interconnected VoIP service providers pursuant to Section 12.3.

LECs (including incumbent LECs and competitive LECs). Each LEC will be asked to provide the FCC Registration Number(s) of the responding carrier and the OCN (LERG assigned service provider number) the responding carrier. For each state in which LECs provide service, they will be asked to provide the following information on a state-by-state basis.

LECs will be required to provide information about switches to Selective Routers, specifically, information about those switches that they own or operate. LECs must report the percent of switches that they own or operate in the network from which 911 calls originate. With respect to those switches, LECs must identify the percent of switches with logically diverse paths to their primary Selective Routers. Logical

diversity is achieved when redundant circuits are assigned between the source node and the destination node. For switches for which they have not provided or made arrangements for a logically diverse path, LECs must discuss the circumstances, including why logically diverse paths are not provisioned, and any plans to provide logically diverse paths in the future. With respect to those switches that a LEC owns or operates in the network from which 911 calls originate, LECs must also report the percent of switches with physically diverse connections to their primary Selective Routers. Physical diversity is achieved when geographically separated redundant facilities are assigned between the source node and the destination node. For those switches for which LECs have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse paths are not provisioned and any plans to provide physically diverse connections in the future.

LECs must also provide information if they own or operate Selective Routers. They must provide the percent of Selective Routers with at least one alternate Selective Router for at least 50% of the 911 traffic. If they have not provided or made arrangements for alternate selective routers for at least 50% of 911 traffic, they must discuss the circumstances including why an alternate selective router for at least 50% of 911 traffic is not provisioned and any plans to provide an alternate selective router in the future. With respect to Selective Routers to public safety answering points (PSAPs), LECs must provide the following information if they own or operate Selective Routers but only for the PSAPs supported by those Selective Routers. LECs must state the number of PSAPs supported by their Selective Routers and the percent of PSAPs with an alternate (back-up) Selective Router in addition to the primary Selective Router. For those PSAPs for which a LEC has not provided or made arrangements for an alternate (back-up) Selective Router in addition to the primary Selective Router, the LEC needs to discuss the circumstances including why an alternative (back-up) selective router is not provisioned and any plans to provide an alternate (back-up) selective router in the future. LECs must also identify the percent of PSAPs with logically diverse paths to their primary Selective Router. For those PSAPs for which a LEC has not provided or made arrangements for logically diverse paths to the primary Selective Router, they must discuss the circumstances including why logically diverse paths are not provisioned, and any plans to provide logically diverse paths in the future. LECs must also report the percent of PSAPs with physically diverse connections to their primary Selective Router. For those PSAPs for which they have not provided or made arrangements for physically diverse connections to the primary Selective Router, LECs must discuss the circumstances including why physically diverse paths are not provisioned and any plans to provide physically diverse paths in the future.

Further, LECs must report the percent of PSAPs with logically diverse paths to their primary Selective Router in which the interoffice portion of the connections to the primary Selective Router is physically diverse. The interoffice network consists of facilities and transmission equipment that interconnects switching offices in a telecommunications inter-exchange network. For those PSAPs with logically diverse paths to the primary Selective Router for which they have not provided or made arrangements for physical diversity in the interoffice portion of the connections to the primary Selective Routers, LECs must discuss the circumstances including why such physical diversity is not provisioned and any plans to provide such physical diversity in the future. LECs will also need to provide the percent of PSAPs where the connection between the PSAP and the primary Selective Router is physically diverse from the connection between the PSAP and the alternate Selective Router. For those PSAPs for which the connection between the PSAP and the primary Selective Router is not physically diverse from the connection between the PSAP and the alternate Selective Router, LECs must discuss the circumstances including why such physically diverse connections are not provisioned and any plans to provide such physically diverse connections in the future. Finally, LECs must provide the percent of PSAPs where the interoffice portion of the connection from the PSAP to the primary Selective Router is physically diverse from the interoffice portion of the connection from the PSAP to the alternate Selective Router. For those PSAPs where the interoffice portion of the connection from the PSAP to the Selective Router is not physically diverse from the interoffice portion of the connection from the PSAP to the alternate Selective Router, LECs must discuss the circumstances including why such physical diversity is not provisioned and any plans to provide physical diversity in the future.

Additionally, LECs that own or operate Selective Routers must provide information about alternate PSAPs, but only for the PSAPs supported by those Selective Routers. These LECs will be required to provide the percent of PSAPs for which traffic is automatically rerouted to another PSAP if the PSAP is unavailable. For those PSAPs without automatic re-routing, they need to discuss the circumstances including why automatic re-routing to another PSAP is not provisioned and any plans to provide such automatic re-routing in the future.

LECs will also be required to provide specific information if they own or operate Automatic Location Information (ALI) databases. LECs must provide the number of ALI Database pairs (redundant). An ALI database pair is a configuration of two ALI databases that will operate seamlessly even if one of the two databases fails. LECs that own or operate ALI databases will also be required to state the percent of PSAPs supported by ALI database pairs in which the connections from the ALI databases to the PSAP are physically diverse. For those PSAPs supported by ALI database pairs in which the connections from the ALI databases to the PSAP are not physically diverse, LECs must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. LECs that own or operate ALI databases must also provide the percent of PSAPs supported by ALI database pairs in which the interoffice portion of the connections from the ALI databases to the PSAP are physically diverse. For those PSAPs supported by ALI database pairs in which the interoffice portion of the connections from the ALI databases to the PSAP are not physically diverse, they must discuss the circumstances including why such physical diversity is not provisioned and any plans to provide such physical diversity in the future.

CMRS Providers. Each CMRS provider will be asked to provide the FRN of the responding provider and the OCN of the responding provider. CMRS providers must provide information for each area in which the CMRS provider serves.

Regarding Mobile Switching Centers (MSCs) to Selective Routers, CMRS providers must provide information for the MSCs that they own or operate. This information includes the: (1) Percent of MSCs in network that have Phase I E911

capability; (2) percent of MSCs in network that have Phase II E911 capability; and (3) percent of MSCs with logically diverse paths to primary Selective Routers. For those MSCs for which CMRS providers have not provided or made arrangements for logically diverse paths, they are required to discuss the circumstances including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. CMRS providers must also report the percent of MSCs with physically diverse connections to their primary Selective Routers. For those MSCs for which they have not provided or made arrangements for physically diverse connections, CMRS providers must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future.

CMRS providers must also provide information about MSCs to Mobile Positioning Centers (MPCs) or Gateway Mobile Location Centers (GMLCs). They must report the percent of MSCs connected to a pair of MPCs/GMLCs. MSCs can be connected to a pair of MPCs/GMLCs for redundancy. In configurations like this, the MSC will continue to provide positioning information even if one of the MPCs/GMLCs suffers an outage. CMRS providers must also state the percent of MSCs with logically diverse paths to their primary MPCs/GMLCs. For MSCs for which they have not provided or made arrangements for logically diverse paths to the primary MPCs/GMLCs, CMRS providers must discuss the circumstances, including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. They must also provide the percent of MSCs with physically diverse connections to their primary MPCs/GMLCs. For those MSCs for which CMRS providers have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future.

Further, CMRS providers must report the percent of MSCs where the connection from the MSC to the primary MPC/GMLC is physically diverse from the connection to the alternate MPC/GMLC. For those MSCs where the connection from the MSC to the primary MPC/GMLC is not physically diverse from the connection to the alternate MPC/GMLC, providers must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future.

CMRS providers that own or operate MPCs/GMLCs must report additional information, including the percent of MPCs/GMLCs for which there is an alternate MPC/GMLC. This question is concerned with the percentage of MPCs/GMLCs that are backed up. An earlier question asked about the percentage of MSCs that are served by a pair of MPCs/GMLCs. Both questions address the redundancy of MPCs/GMLCs but this one addresses MPC/GMLC pairing while the previous one addressed redundant access from MSCs to MPC/GMLC pairs. For those MPCs/GMLCs that do not have alternates, CMRS providers must discuss the circumstances including why alternate MPCs/GMLCs are not provisioned and any plans to provide alternate MPCs/GMLCs in the future. CMRS providers must also state whether they are able to pass location information from more than one MPC/GMLC. For those cases in which they are not able to do so, they must discuss the circumstances including why the capability to pass location information from more than one MPC/GMLC is not provisioned and any plans to provide this capability in the future.

CMRS providers that own or operate MPCs/GMLCs must also report whether there are logically diverse paths from each MPC/GMLC to either the primary ALI database or the back-up ALI database. For those cases where they have not provided or made arrangements for logically diverse paths, CMRS providers must discuss the circumstances including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. Additionally, CMRS providers that own or operate MPCs/GMLCs must state whether there are physically diverse connections from each MPC/GMLC to either the primary ALI database or the back-up ALI database. For those cases where they have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future.

Interconnected VoIP Service Providers. Each responding interconnected VoIP service provider will be asked to report their FRN, if any, and OCN, if any. Interconnected VoIP providers will have to provide information about interconnection to Selective Routers and third-party providers. They must report the percent of switches wherein 911 service is provided by the interconnected VoIP provider, where the VoIP provider has a direct connection to Selective Routers. Additionally, interconnected VoIP service providers will be required to report the percent of switches wherein 911 service is provided by a third party, where another company is utilized to route 911 calls.

Interconnected VoIP service providers that have direct connections to Selective Routers must report the percent of switches with logically diverse paths to their primary Selective Routers—for cases when the VoIP provider has direct connections to Selective Routers. For switches for which they have not provided or made arrangements for logically diverse paths, they must discuss the circumstances, including why logically diverse connections are not provisioned and any plans to provide logically diverse paths in the future. Interconnected VoIP service providers that have direct connections to Selective Routers must also report the percent of switches with physically diverse connections to their primary Selective Routers. For those switches for which they have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future.

Interconnected VoIP service providers that use a third party to provide connections to Selective Routers must report the percent of switches with logically diverse paths to their primary access points—for cases when the VoIP provider uses a third party.

For switches for which they have not provided or made arrangements for logically diverse paths to their primary access points, they must discuss the circumstances including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. Interconnected VoIP service providers that use a third party to provide connections to Selective Routers are also required to report the percent of switches with physically diverse connections to their primary access points. For those switches for which they have not provided or made arrangements for physically diverse connections to their primary access points, they must describe the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. Responding LECs, CMRS providers and interconnected VoIP service providers must also provide information regarding disaster planning for the resiliency and

reliability of 911 architecture. All respondents must state whether they have a contingency plan that addresses the maintenance and restoration of 911/E911 service during and following disasters. If the answer is ''yes,'' the respondent will be asked to describe its contingency plan including those elements that address the maintenance and restoration of 911/E911 service. If the answer is ''no,'' the respondent will be asked to discuss the circumstances including why it does not have a contingency plan that addresses 911/E911 maintenance and restoration and any plans to develop such a contingency plan in the future.

Respondents that do have a contingency plan that addresses the maintenance and restoration of 911/E911 service must state whether they regularly test their plan. If respondents answer ''yes'' to this question, they must describe the program for testing their contingency plan, including the extent to which they periodically test to ensure that the critical components (e.g., automatic re-routes, PSAP Make Busy Key) included in contingency plans work as designed and the extent they involve PSAPs in tests of their contingency plan. Respondents that answer ''no'' will be asked to discuss the circumstances including why they do not test their contingency plan and any plans to test their plan in the future.

All respondents must state whether they have a routing plan so that, in the case of a lost connection of dedicated transport facilities between the originating switch/MSC and the Selective Router, 911 calls are routed over alternate transport facilities. Respondents that answer ''yes'' must describe their routing plan. Respondents that answer ''no'' must discuss the circumstances and any plans to develop such a plan in the future.

All responding LECs, CMRS providers and interconnected VoIP service providers must state whether, in cases where 911 service is disrupted, they make test calls to assess the impact as part of the restoration process. If the answer is ''no,'' respondents must discuss the circumstances including why they do not make test calls as part of the restoration process and any plans to do so in the future. Respondents must also state whether their company makes additional test calls when service is restored and, if not, they must discuss why they do not make additional test calls.

All respondents must describe any current plans they have to migrate to next generation 911 (NG911) architecture once a standard for NG911 has been developed. Finally, respondents are asked to provide any additional relevant information regarding steps they have taken to ensure redundancy, resiliency and reliability of their 911/E911 facilities.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–15586 Filed 7–8–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: DAVAO LLC, Station KWAP, Facility ID 165961, BMPH–20080611AAZ, From PINE HAVEN, WY, To ROZET, WY; JER LICENSES, LLC, Station NEW, Facility ID 170966, BNPH–20070502ACF, From GRAPELAND, TX, To BULLARD, TX; MATINEE RADIO, LLC, Station KKUL–FM, Facility ID 164216, BMPH–20080523ADF, From GROVETON, TX, To TRINITY, TX; ULTIMATE CAPS, INC., Station KYDT, Facility ID 78241, BPH–20080611ABA, From SUNDANCE, WY, To PINE HAVEN, WY; UNITED STATES CP, LLC, Station KXCL, Facility ID 164277, BPH–20080606AES, From WESTCLIFFE, CO, To FORT CARSON, CO.

DATES: Comments may be filed through September 8, 2008.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E8–15593 Filed 7–8–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202) 523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010979–046.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd.; CMA CGM, S.A.; Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Co., Ltd.; Sea Star Line Caribbean, LLC; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell; 1850 M Street NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Interline Connection, N.V. as a party to the agreement.

Agreement No.: 011733–024.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and Alianca Navegacao e Logistica Ltda.; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; COSCO Container Lines Co., Ltd.; Emirates Shipping Lines; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mitsui O.S.K. lines Ltd.; Nippon Yusen Kaisha; Safmarine Container Lines N.V.; Senator Lines GmbH; Norasia Container Lines Limited; Tasman Orient Line C.V. and Zim Integrated Shipping as non-shareholder parties.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Zim Integrated Shipping Services, Ltd. as a non-shareholder party to the agreement.

Agreement No.: 012003–001.

Title: APL/CMA CGM/HMM/MOL China/U.S. East Coast Via Panama Vessel Sharing Agreement.

Parties: APL Co. Pte Ltd.; American President Lines, Ltd.; CMA CGM S.A.; Hyundai Merchant Marine Co., Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: Brook M. Thibault, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment revises the vessel contribution of the parties. It also restates the agreement and changes the name to the CMA CGM/TNWA China/U.S. East Coast Via Panama Vessel Sharing Agreement.

Agreement No.: 012007–001.

Title: APL/CMA CGM South East Asia and Sri Lanka/U.S. East Coast via Suez Slot Charter Agreement.

Parties: APL Co. Pte. Ltd/American President Lines, Ltd. (''APL''); and CMA CGM S.A (''CMA'').

Filing Party: Eric C. Jeffrey, Esq.; Goodwin Procter, LLP; 901 New York Avenue, NW.; Washington, DC 20001.

Synopsis: The amendment increases the number of slots that APL charters to CMA CGM and revises the duration and termination provisions.

By Order of the Federal Maritime Commission.

Dated: July 3, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–15567 Filed 7–8–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Fidelity Logistics Corp., 20 W. Lincoln Ave., Ste. 302, Valley Stream, NY 11580, Officer: Chenbang Lee, Vice President, (Qualifying Individual).

Intimove Inc., 1880 NE. 170 Street, North Miami Beach, FL 33162, Officer: David Etzion, President, (Qualifying Individual).

Transportes Zuleta, Inc., 844 W. Flagler Street, Miami, FL 33130, Officers: Lourdes Callejas, Secretary, (Qualifying Individual), Jacqueline Morales, President.

South Florida Logistic Partners, 330 SW 27th Avenue, #605, Miami, FL 33133, Officer: Manuel D. Perez, President, (Qualifying Individual).

Alto Air Freight, Inc., 145 Hook Creek Blvd., Building B6A, Valley Stream, NY 11581, Officers: Rose Pierini, Vice President, (Qualifying Individual), Neil Silver, President.

Veco Logistics Miami, Inc., 8375 NW. 68 Street, Miami, FL 33166, Officers: Zuny Hernandez, Treasurer, (Qualifying Individual), Zoraida E. Serrano, President.

Fast Track Worldwide Logistics, Inc., 1841 NW. 93rd Avenue, Miami, FL 33172, Officer: Niurka Alvarado, President, (Qualifying Individual).

Speedway Freight Services, Inc., 144–26 150th Street, Jamaica, NY 11434, Officer: Woong C. Kang, President, (Qualifying Individual).

Fidelity Logistics Corp., 20 W. Lincoln Avenue, Valley Stream, NY 11580, Officer: Chenbang Lee, Vice President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Lion Transport, Inc., 1835 NW. 112 Avenue, Ste. 176, Doral, FL 33172, Officer: Silvia E. Bustamante, President, (Qualifying Individual).

Charter 3 Global, LLC, 1420 Hillcrest Avenue, Kalamazoo, MI 49008, Officers: Michiharu Yoshikawa, Vice President, (Qualifying Individual), Bill Hammons, Jr., President.

Morrison Express Corporation, 2000 Hughes Way, El Segundo, CA 90245, Officer: William F. Woods, Jr., Director, (Qualifying Individual).

Dyno Global Projects, LLC, 99 Morris Avenue, Springfield, NJ 07081, Officer: George Meier, Member, (Qualifying Individual).

STD Logistics, LTD, One Cross Island Plaza, #304, Jamaica, NY 11422, Officer: Sheldon Stone, President, (Qualifying Individual).

All Services & Merchandise Corp dba Cargo Mundo, 2840 NW. 108 Avenue, Miami, FL 33172, Officer: Henry A. Herrera, President.

Connected International, Inc., 6250 W. Century Blvd., Ste. 213, Los Angeles, CA 90045, Officers: Hung F. Dai, President, (Qualifying Individual), Matthew Timmer, Secretary.

TMO Global Logistics, LLC, 600 Peter Jefferson Parkway, #310, Charlottesville, VA 22911, Officer: Christopher M. Ball, Vice President, (Qualifying Individual).

Seaport Int'l Freight Consolidators, Inc., dba Seaport Int'l Freight Consolidators, dba Seaport Int'l Freight Forwarder & Consollidators, 10230 SW 20th Street, Miramar, FL 33025, Officers: Winston Barrett, Treasurer, (Qualifying Individual), Floyd O. Chin, President.

Nor-Cargo US, Inc., 3340–B Greens Road, Ste. 605, Houston, TX 77032, Officer: Sten Svendsen, President, (Qualifying Individual).

1 Trade Fwding Inc. dba 1 Trade Logistics, 751 Port America Place, #650, Grapevine, TX 76051, Officer: Juan Arango, Vice President, (Qualifying Individual).

Mainfreight, Inc., 1400 Glenn Curtiss Street, Carson, CA 90746, Officer: Christopher A. Coopersmith, President.

Montes Conection dba Montes Forwarding, 1050 Front Street, Slidell, LA 70458, Officers: Maria V. Montes, President, (Qualifying Individual), Juan M. Montes, Vice President.

Litmark, Inc., 718 Lane Avenue N., Jacksonville, FL 32254, Officer: Alfredas Tamole, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Fracht FWO Inc., 29 W. 30th Street, 12th Floor, New York, NY 10001, Officer: Werner H.J. Seyfried, Vice President, (Qualifying Individual).

Customs Cleared Company, Inc., 2753 S. Mendenhall, #11F, Memphis, TN 38115, Officer: Karen Wood, President, (Qualifying Individual).

South Florida Freight Forwarding, 330 SW 27th Avenue, #605, Miami, FL 33135, Officer: Manuel D. Perez, President, (Qualifying Individual).

Dated: July 3, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–15568 Filed 7–8–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 2008

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Community Bancshares of Mississippi, Inc., Employee Stock Ownership Plan, Brandon, Mississippi; to acquire up to an additional 0.67 percent for a total of 18.99 percent, of the voting shares of Community Bancshares of Mississippi, Inc., Brandon, Mississippi, and thereby indirectly acquire its wholly-owned bank subsidiaries, Community Bank of North Mississippi, Amory, Mississippi; Community Bank of Mississippi, Forest, Mississippi; Community Bank Meridian, Meridian, Mississippi; Community Bank, N.A., Memphis, Tennessee; Community Bank Ellisville, Ellisville, Mississippi; Community Bank Coast, Biloxi, Mississippi; its 100 percent owned middle-tier bank holding company Community Holding Company of Alabama, Brandon, Mississippi, and its wholly-owned subsidiary bank, Community Bank, N.A., Mobile, Alabama.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. NATCOM Bancshares, Inc., Superior, Wisconsin; to acquire 100 percent of Superior Bancorporation, Ltd., Superior, Wisconsin and thereby indirectly acquire Community Bank, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, July 3, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15558 Filed 7–8–08; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197]

General Services Administration Acquisition Regulation;Information Collection; GSAR Provision 552.237–70, Qualifications of Offerors

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding the qualifications of offerors. A request for public comments was published at 73 FR 4233, January 24, 2008. No comments were received. This OMB clearance expires on July 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 8, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Contract Policy Division, GSA, (202) 208–4949.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jasmeet Seehra, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of contracts for building services. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 6794
Responses Per Respondent: 1
Hours Per Response: 1
Total Burden Hours: 6794.
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

Dated: July 1, 2008

Al Matera,

Director,Office of Acquisition Policy.

[FR Doc. E8–15524 Filed 7–8–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0223; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public

comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: Evaluation of the Cash and Counseling Demonstration—OMB No. 0990–0223—Reinstatement with Changes—Assistant Secretary of Planning and Evaluation (ASPE).

Abstract: The original evaluation of the national Cash and Counseling Demonstration was intended to include three groups: self-directing consumers, a control group, and non-participants. When funding was not available to survey all groups, the non-participant sample was removed. The subsequent evaluations showed that self-directing consumers were more satisfied with their supportive services, reported fewer unmet needs, and enjoyed greater well-being than other Medicaid programs. Still, despite these apparent benefits, relatively few of the beneficiaries who were eligible to participate in Cash and Counseling demonstrations elected to do so (8 to 15 percent). Since that time, the Cash and Counseling program has been expanded under the 1915(j)(2) Section of the Deficit Reduction Act of 2005 and beginning January 1, 2007, states were permitted to offer the program to Medicaid recipients without demonstrating budget neutrality and without a requirement for periodic renewal of the state plan amendment as required for ''1115'' or ''1915'' (c) waivers.

This study involves drawing a sample from Medicaid beneficiaries in New Jersey who are eligible to enroll in the state's Cash and Counseling program. The qualifications for enrollment have not changed since the original research. This study will include only individuals who did not enroll (non-participants) who will be compared to those who did enroll (and about whom data were collected) during the original demonstration/evaluation data collection as well as those who have enrolled since (about whom the state of New Jersey collects descriptive data for Medicaid program administrative purposes). The government will conduct 600 one-time telephone interviews over a three-month period. The survey includes questions asked in the original evaluation of the Cash and Counseling demonstration surveys, as well as original questions designed to measure factors related to nonparticipation. These questions will allow comparisons between participants and non-participants of the Cash and Counseling demonstration.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Non-Participants (or Proxies)	Telephone Interview	600	1	27/60	270

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–15571 Filed 7–8–08; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 30-Day Public Comment Request; 30-day Notice

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer. All comments must be faxed to OMB at 202–395–6974.

Proposed Project: Evaluation of the Afghanistan Health Initiative—OMB No. 0990–NEW—Office of the Assistant Secretary for Planning and Evaluation (ASPE).

Abstract: The Offices of Global Health Affairs (OGHA) and the Assistant Secretary for Planning and Evaluation (ASPE), within the U.S Department of Health and Human Services (HHS), are requesting Office of Management and Budget (OMB) approval for a collection of information to evaluate two components of the *Afghanistan Health Initiative (AHI).* The Afghanistan Health Initiative is authorized by the Afghanistan Freedom Support Act of 2002 [Pub. L. 107–327 § 103(a)]. The *AHI's* goal is to improve maternal and child health and to reduce maternal and child mortality in Afghanistan, primarily through strengthening and updating the knowledge and skills of

clinical service providers and managers at the Rabia Balkhi Hospital (RBH) in Kabul. Under the *AHI*, HHS has funded separate cooperative agreements with International Medical Corps (IMC) and CURE International (CURE).

The evaluation includes two approaches for data collection: (1) A set of qualitative interviews with four respondent groups (OB/GYN residents, attending physicians, midwives, and Rabia Balkhi Hospital management staff) and (2) administering a subset of the clinical Standards Based Management (SBM) assessment with two respondent groups (OB/GYN residents and midwives).

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Management Interview Guide	Management Staff	21	1	50/60	18
Clinician Interview Guide	Attending Physicians	8	1	50/60	7
Clinician Interview Guide	1st–4th Year Resident Physicians	11	1	50/60	9
Clinician Interview Guide	Midwives	15	1	50/60	13
1st Year Resident, Standards-Based Management Assessment.	1st Year Resident physician staff	31	1	1.6	50
2nd Year Resident, Standards-Based Management Assessment.	2nd Year Resident physician staff	8	1	1.6	13
3rd Year Resident, Standards-Based Management Assessment.	3rd Year Resident physician staff	9	1	1.1	10
4th Year Resident, Standards-Based Management Assessment.	4th Year Resident physician staff	8	1	1.6	13
Midwife, Standards-Based Management Assessment.	Midwives	75	1	2.2	165
Total					298

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–15601 Filed 7–8–08; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Fourth Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of meeting.

AUTHORITY: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the fourth in a series of federal advisory committee meetings regarding the national health promotion and disease prevention objectives for 2020, to be held online (via WebEx software). This meeting will be the equivalent of an in-person meeting of the Committee, and will be open to the public. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 will review the nation's health promotion and disease prevention objectives and efforts to develop goals and objectives to improve the health status and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation for developing and implementing the next iteration of national health promotion and disease prevention goals and objectives and provide recommendations for initiatives to occur during the initial implementation phase of the goals and objectives. HHS will use the recommendations to inform the development of the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

DATES: The Committee will meet on July 30, 2008, from 12 p.m. to 2 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held online, via WebEx software. For detailed instructions about how to make sure that your windows computer and browser is set up for WebEx, please visit the ''Secretary's Advisory Committee'' page of the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/advisory/default.asp.*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8259 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at *http://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION: The names of the 13 members of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 are available at *http://www.healthypeople.gov.*

Purpose of Meeting: Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range

of health needs, encourage collaborations across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

Public Participation at Meeting: Members of the public are invited to listen to the online Advisory Committee meeting. There will be no opportunity for oral public comments during the online meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020. Written comments are welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. They can be submitted through the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/comments/* or they can be e-mailed to *HP2020@hhs.gov*. Please note that the public comment Web site will be updated throughout the Healthy People development process, so people should return to the site frequently to provide their input.

To listen to the Committee meeting, individuals must pre-register to attend the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 at the Healthy People Web site located at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum WebEx capacity is reached and must be completed by close of business Eastern Standard Time on July 29, 2008. A waiting list will be maintained should registrations exceed WebEx capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available.

Registration questions may be directed to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone) or (301) 634–9301 (fax).

Dated: June 25, 2008.

Penelope Slade Royall,

RADM, USPHS, Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion), Office of Disease Prevention and Health Promotion.

[FR Doc. E8–15548 Filed 7–8–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Administration and Management; Program Support Center; Statement of Organization, Functions and Delegations of Authority

This notice amends Part (P) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Office of the Assistant Secretary for Administration and Management (AJ), Program Support Center (PSC), as last amended at 60 FR 51480, November 28, 2007. This notice reflects organizational changes in the Program Support Center (P), Administrative Operations Service (PE). Specifically, it transfers the security and emergency service functions currently located within the Division of Property Management (PEC) to a new component, the Division of Security and Emergency Services (PEL); place the functions of the Division of PSC Business Operations (PEH) into the Office of Deputy Assistant Secretary for Program Support (PA) to improve accountability and increase overall organizational effectiveness; and make other changes that are reflective of AOS current functions and responsibilities. The changes are as follows:

I. Under Chapter P, Program Support Center, Section P.20 Functions, delete the paragraph titled ''Administrative Operations Service (PE)'' in its entirety and replace with the following:

Administrative Operations Service (PE)

Section PE.00 Mission: The mission of the Administrative Operations Service (AOS) is to provide high-quality administrative support services at competitive prices by capitalizing on its expertise and leveraging economies of scale. Major service areas in AOS include: property management, technical support, information technology including a wide array of information technology infrastructure support services; and other administrative and corporate support.

Section PE.10 Organization. The Administrative Operations Service (AOS) is headed by a Director who reports directly to the Director, Program Support Center. The AOS includes the following components:

1. Office of the Director (PEA).
2. Division of Technical Support (PEF).
3. Division of Property Management (PEC).
4. Information Technology Operations (PEK).
5. Division of Security and Emergency Services (PEL).
6. Division of Freedom of Information Act Operations (PEJ).

Section PE.20 Functions

Office of the Director (PEA): The Office of the Director, Administrative Operations Service (AOS) oversees the implementation of providing to HHS components and other Federal agencies nationwide administrative and technical services which include: (1) Building operations, surplus real property, leasing, security, property management, warehousing, logistics and space management services; (2) printing, duplicating and typesetting; (3) operation of reference libraries; (4) mail distribution and handling; (5) claims service for Public Health Service (PHS) components nationwide under specific statutory authorities; (6) acquisition services; (7) technical graphics and photography services; and (9) a wide range of telecommunications services.

Division of Technical Support (PEF): The Division of Technical Support (DTS) provides a variety of support services for the HHS and other customer components located within the Washington, D.C. Metropolitan Area and for components located in the HHS Regional Offices nationwide. These services include (1) voice, data, and video services, visual aids and graphic art services, photography services, library services, printing and reproduction, including operation of copy centers, mail and messenger services, and support services for conference room facilities; and (2) carries out printing management and records management responsibilities for the PSC.

Division of Property Management (PEC): The Division of Property Management (DPM) provides the following related services: (1) Building safety program, lease management, building management and operations, building alteration, repair and maintenance program; parking management, information/locator services; supply and inventory management; (2) provides shipping, receiving and laboring service and operates a property management and surplus property utilization and disposal system; and (3) on behalf of the Secretary, executes and implements the transfer of Federal surplus real property for public health purposes pursuant to sections 203(K) and (n) of the Federal Property and Administrative Services Act of 1949, as amended.

Division of Security and Emergency Services (PEL): The Division of Security and Emergency Services (DSES)

provides overall leadership, direction, coordination and planning to improve security and emergency services. Specifically, (1) Establishes program goals, objectives, priorities and provides oversight as to their execution; (2) plans, directs, coordinates and evaluates program-wide management activities; (3) maintains effective relationships with HHS organizations, other Federal agencies, State and local governments and other public and private organizations concerned with providing security and assisting with emergencies; and (4) plans, directs and coordinates administrative management activities, i.e., budget, finance, personnel, procurements, redelegations of authority, emergency planning, training, and has responsibility related to awarding PSC contract funds.

1. Physical Security Branch (PEL1). The Physical Security Branch (PSB) develops, coordinates and administers DSES' physical security program to ensure the protection and safety of employees, customers, visitors and property at all locations within its purview. The Branch, in accordance with Federal requirements, governing redelegations of authority and customer agreements, provides physical security services and products for PSC and its customers. These services and products include: (1) Security assessments and mitigation/management solutions; (2) development of security program requirements, acquisition strategy, and administration of security contracts; (3) selection, installation and oversight of physical access control, intrusion detection and monitoring systems to include monitoring and maintenance; (4) provide oversight of certified contract guard services; (5) coordination of security and public safety responses to facility and occupant emergencies; (6) provide technical assistance and consultation regarding security matters related to new construction, build-outs and retrofits, bomb threats, suspicious objects, workplace violence, and crime prevention; and (7) manage DSES' HSPD–12 identification card issuance and physical access control programs.

2. The Personnel Security Branch (PEL2). The Personnel Security Branch (PSB) administers DSES' personnel security/suitability program in accordance with governing federal rules, regulations and policies: (1) Helps customers determine the sensitivity level of all positions within their employees' areas of responsibility, ensuring required background investigations are conducted; (2) establishes effective methods for consistent, timely, and equitable adjudicative determinations on all security/suitability cases involving employees and contractors; (3) address or refer loyalty or national security matters to the proper authority for evaluation and/or investigation; (4) in conjunction with the Office of Global Health Affairs provides support to administer foreign travel and foreign visitation approval and briefing programs for customers; and (5) provides personnel security consultation services; oversees the DSES' HSPD–12 enrollment and registration processes.

3. Emergency Services Branch (PEL3). The Emergency Services Branch (ESB) prepares employees and customers for emergencies and disasters before they manifest, as well as the agency's response during or after the event has occurred. This includes emergency notification, facility evacuation, emergency-response-management, continuity of operations (COOP) and business continuity planning (BCP), as well as reconstituting the enterprise at a fully operational level. Services include: (1) Preparation of emergency notification methodologies and systems; (2) evacuation planning; (3) development of communication plans and multi-agency coordination and incident command strategies; (4) formulation of continuity of operations (COOP) and business continuity plans; and (5) inventory, storage and maintenance of emergency supplies and materials planning, and the development and offering of training and exercise programs for emergency team members and volunteers.

4. Support Services Branch (PEL4). The Support Services Branch (SSB) provides leadership, policy guidance and supervision of DSES' budget and procurement operations. The major service areas include: (1) Technical and human resource requirements and associated cost determinations, (2) budget planning and execution; audit of DSES expenditures; (3) return on investment evaluations; (4) development of service level agreements and agency agreements; and (5) manages DSES' purchase card program, develops Division travel and training plans, and oversees the time and attendance approval process and performance management programs.

Division of Freedom of Information Act Operations (PEJ). The Division responds to all Freedom of Information Act (FOIA) requests for records generated by, and in the custody and control of, components within the Department of Health and Human Services (HHS) and the Program Support Center. Specifically, the Division: (1) Responds to all requests for records that involve more than one of HHS components and the PSC; (2) responds to all administrative appeals; (3) coordinates with the Office of General Counsel and the HHS component to resolve administrative appeals which result in litigation; and (4) provides FOIA training and consultation.

II. Under Chapter PA, Office of the Deputy Assistant Secretary for Program Support add the following new paragraph:

Performs overall business and financial management services for the PSC in the following areas: (1) Provides strategic business planning and reporting; (2) conducts business process re-engineering; (3) analyzes costs and manages price reviews to maintain competitiveness of PSC services; (4) manages PSC stakeholder relations and provides customer relations services; (5) prepares the PSC budget for presentation to and approval by the Board of Directors to the HHS Service and Supply Fund; (6) executes approved PSC budgets, issuing allowances as approved by the Deputy Assistant Secretary for Program Support, and consistent with funding levels approved by the Board; (7) coordinates arrangements of agency agreements funding for projects and functions; (8) coordinates the implementation of the Government Performance and Result Acts within the PSC; and (9) develops and directs communication and marketing campaigns for internal HHS stakeholders and PSC customers.

III. Delegations of Authority: All delegations and redelegations of authority to officers and employees of the Departmental components which were transferred to the Program Support Center, which were in effect immediately prior to this reorganization will be continued in effect with them or their successors, pending further delegation, provided they are consistent with this reorganization.

Dated: June 24, 2008.

Joe W. Ellis,

Assistant Secretary for Administration and Management.

[FR Doc. E8–15430 Filed 7–8–08; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0369]

Ruminant Feed Ban Support Project; Availability of Cooperative Agreements Under a Limited Competition; Request for Applications: RFA–FD–08–008; Catalog of Federal Domestic Assistance Number: 93.449

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Division of Federal-State Relations (DFSR) in coordination with the Center for Veterinary Medicine (CVM), is announcing the availability of cooperative agreements funding to further enhance the infrastructure of State, territorial, and tribal animal feed safety and bovine spongiform encephalopathy (BSE) prevention programs. These cooperative agreements are intended to fund additional personnel, equipment, supplies, and training support activities related to the FDA ruminant feed ban (referred to as the BSE/ruminant feed ban), in State, territory, and tribal governments. FDA anticipates providing approximately $1 million in direct plus indirect costs in support of this program in fiscal year (FY) 2008. It is anticipated that four awards will be made for up to $250,000 per award per year for up to 2 years.

DATES: The application receipt date is August 8, 2008.

ADDRESSES: Applications may be submitted on or after the opening date and must be successfully received by *http://www.grants.gov*[1] no later than 5 p.m. local time (of the applicant institution/organization) on the application submission/receipt date. If an application is not submitted by the receipt date and time, the application may be delayed in the review process or not reviewed.

The required application, SF–424, can be completed and submitted online. The package should be labeled ''Response to RFA–FDA–08–008''. If you experience technical difficulties with your online submission you should contact Marc Pitts by telephone at 301–827–7162 or by e-mail at *marc.pitts@fda.hhs.gov*.

[1] FDA has verified the non-FDA Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

Paper applications will not be accepted.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Marc Pitts, Office of Acquisitions and Grants Management, Food and Drug Administration (HFA–500), 5630 Fishers Lane, suite 2104, Rockville MD 20857 (see also **ADDRESSES**).

Regarding the programmatic aspects of this notice:Jennifer Gabb, Division of Federal-State Relations (DFSR), Office of Regulatory Affairs, Food and Drug Administration (HFC– 150), 5600 Fishers Lane, Rm. 12– 07, Rockville, MD 20857, 301–827– 2899, e-mail: *jennifer.gabb@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under these cooperative agreements, the State, territory, and tribal governments would enhance their feed/BSE safety programs to increase the ability to locate and visit firms involved in the manufacture, distribution, and transportation of animal feed and operations feeding ruminant animals in their jurisdiction, to verify compliance with the ruminant feed ban. Funds could be used to increase State, territory, and tribal personnel dedicated to conducting these inspections. Funds could be used for supplies, training, and laboratory equipment for feed sample testing using FDA validation methods. Funds could also be used to conduct outreach educational activities and materials as needed to further and enhance the industries knowledge and compliance with ruminant feed ban.

The goal of enhancing their feed/BSE safety programs is to increase State, territory, and tribal inspections under section 702 of the Federal Food, Drug, and Cosmetic Act (act) (21 U.S.C. 372) of renderers, protein blenders, and feed mills that manufacture animal feeds and feed ingredients, and inspections of salvagers of food and feed, and transporters of animal feed and feed ingredients utilizing materials prohibited under the ruminant feed ban. Finally, the Feed Ban Support Project funds are intended to supplement, not replace, State funding for program improvement.

The following are seven key project areas identified for this effort: (1) Hire and/or train State/territory/tribal personnel to conduct ruminant feed ban inspections. Training of State/territory/tribal personnel may be accomplished through the ORA University, or the Association of American Feed Control Officials Annual Feed Seminar, or other training that meets State/territory/tribal and FDA requirements. New hires for this program must meet the State/territory/tribal agency's qualifications for feed inspections and sampling techniques; (2) hire and/or train laboratory personnel to verify that feed samples are free of materials prohibited under the ruminant feed ban. Laboratory analyses must utilize FDA accepted methodologies for detection of prohibited materials; (3) identify and inspect renderers, protein blenders, commercial animal feed manufacturers, feed salvagers, distributors (including retailers), transporters of animal feed and feed ingredients, on-farm animal feed mixers, and ruminant feeders within the State/territory/tribal jurisdiction that have not already been identified and/or inspected for compliance with the ruminant feed ban. These inspections would be conducted under section 702 of the act using and completing the FDA Ruminant Feed Ban Inspection Checklist and Ruminant Feed Ban Compliance Program to verify compliance with the BSE/ruminant feed ban. These inspections would be conducted by officers and employees duly commissioned by FDA in accordance with section 702 of the act; (4) conduct surveillance sampling of renderers, protein blenders, and feed mills that manufacture with materials prohibited under the BSE/ruminant feed ban. Sample feeds formulated without prohibited material. A minimum of one sample from each facility would be obtained during the inspection and would be analyzed by the State/territorial/tribal government for prohibited materials. This surveillance sampling would be conducted under section 702 of the act using and completing the FDA Ruminant Feed Ban Inspection Checklist and Ruminant Feed Ban Compliance Program to verify compliance with the BSE/ruminant feed ban. This surveillance sampling would be conducted by officers and employees duly commissioned by FDA in accordance with section 702 of the act; (5) provide copies of all completed BSE/Ruminant Feed Ban checklists and sample results as a part of the mid-year program progress report to the FDA Project officer or designated office, as well as provide completed checklists and sample results in accordance with section 702 of the act; (6) be able to identify and quantify improvements to the existing State/ territory/tribal BSE/ruminant feed ban program or developing new programs (i.e., personnel hiring, personnel training, equipment upgrades, increase in inspections conducted) in the mid-year

report as a result of the cooperative agreement; (7) conduct outreach educational activities and materials as needed to further and enhance the industries knowledge and compliance with ruminant feed ban.

Please visit *http://www.grants.gov* to view the full version of this Request for Applications (RFA). FDA urges applicants to read the full version RFA in its entirety prior to submitting application packets.

The events of September 11, 2001, reinforced the need to enhance the security and safety of the U.S. food supply. Congress responded by passing the Bioterrorism Act which President Bush signed into law on June 12, 2002. The Bioterrorism Act is divided into the following five titles: (1) Title I—National Preparedness for Bioterrorism and Other Public Health Emergencies; (2) Title II—Enhancing Controls on Dangerous Biological Agents and Toxins; (3) Title III—Protecting Safety and Security of Food and Drug Supply; (4) Title IV—Drinking Water Security and Safety; and (5) Title V—Additional Provisions

Subtitle A of Title III—Protection of Food Supply, Section 311—Grants to States for Inspections, amends the act by adding section 909 to authorize the Secretary of Health and Human Services to award grants to States, territories, and Indian tribes that undertake examinations, inspections, and investigations, and related activities under section 702 of the act. The grant funds are only available for the costs of conducting these examinations, inspections, investigations, and related activities.

Toward these ends, ORA is offering these cooperative agreements to State/territorial/tribal governments for them to develop, new or enhance the capability of, their existing BSE/ruminant feed ban programs and assist in an increased surveillance presence throughout the commercial feed channels to prevent the introduction or amplification of BSE in the United States. State/territorial/ tribal inspections are based on a determination of compliance of firms with the ''Animal Proteins Prohibited In Ruminant Feeds'' regulation, (21 CFR 589.2000), as well as any subsequent regulations and guidance applicable to the BSE/ruminant feed ban. This regulation is designed to prevent the establishment and amplification of BSE through animal feed, by prohibiting the use of certain proteins derived from mammalian tissue in the feeding of ruminant animals. The regulation affects renderers, protein blenders, commercial animal feed manufacturers, distributors (including retailers), transporters of animal feed and feed ingredients, on-farm animal feed mixers, and ruminant feeders. Based on the need to control the entry and spread of this disease, the agency has set a goal to assist in the development of new, or the enhancement of existing, State/territory/tribal BSE/ruminant feed ban programs to help meet compliance with the regulation.

II. Project Goals, Definitions, and Examples

The goal of FDA's ORA Cooperative Agreement Program is to enhance, complement, develop, and improve State/territory/tribal feed safety and surveillance programs. This will be accomplished through the provision of funding for additional equipment, supplies, funding for personnel, training in current FDA approved feed testing methodologies, participation in proficiency testing to establish additional reliable laboratory sample analysis capacity, and analysis of surveillance samples and State/territorial/tribal compliance inspections. This will also require extensive cooperation and coordination with FDA District Offices to minimize duplication of inspections.

These cooperative agreements will be made to either fund the development of new State/territory/tribal BSE/Ruminant Feed Ban programs or to enhance existing State/territory/tribal BSE/ruminant feed ban programs for the funding of items such as: Supplies, lab equipment, surveillance, sample collection, personnel, for the provision of training in current inspectional and analytical methodology, for the analysis of feed and feed products, and BSE/ruminant feed ban inspections. Successful applications will be selected for funding to ensure a broad geographic distribution of the program. Size of the existing or new State/territory/tribal program and number of facilities to be covered under the cooperative agreement will also be a determining factor.

These cooperative agreements are not to fund licensed medicated feed or routine feed safety good manufacturing practices (GMP) inspections that are unrelated to the ruminant feed ban. These awards may be only used for the development of new State/ territory/ tribal BSE/ruminant feed ban programs or to enhance and supplement existing State/ territory/tribal BSE/ruminant feed ban program funding. States with current BSE/ruminant feed ban contracts from FDA can maintain these contracts for BSE/ruminant feed ban inspections at the discretion of the State and FDA. However, the facilities and work covered under the contract cannot be counted towards fulfillment of the cooperative agreement and must remain distinct and separate from the cooperative agreement.

III. Reporting Requirements

A final Program Progress Report and a final Financial Status Report (FSR) (SF–269) are required within 90 days of the expiration date of the project period as noted on the Notice of Grant Award. In addition, the grantee must file an invention statement and disposition of equipment statement within 90 days after the end date of the project period as noted on the notice of the cooperative agreement award. An original and two copies of each report shall be submitted to Marc Pitts, Grants Management Office (see ''). The program progress report should include: (1) Status report on the installation and operational readiness of any analytical equipment that is purchased; (2) status report on the hiring and training of State/territorial/tribal laboratory personnel; (3) copies of the inspection report on the firms for which Ruminant Feed Ban Inspection checklists were completed including general assessment of compliance status; (4) summary report on the facility inventory that is maintained in the State/territory/tribal government; (5) status report on the hiring and training of personnel to conduct the inspections; (6) report on feed sample descriptions and subsequent analytical results; (7) where the examinations, inspections, or investigations and related activities undertaken under section 702 of the act result in a State/territorial/tribal enforcement action, a summary report of the follow up actions and final resolution of the findings; (8) summary of improvements (identify and quantify) in the overall State/territory/tribal BSE/ruminant feed ban program resulting from the cooperative agreement; and (9) provide copies of all completed BSE/ruminant feed ban checklists and sample results as a part of the quarterly program progress report to the FDA Project officer or designated office.

A Mid-Year Progress Report is also required no later than 90 days after the close of the budget period. The Mid-Year Progress Report should cover 6 months of activity including all criteria listed in the previous paragraph.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semi-annually by the project officer. Project monitoring may also be in the form of telephone conversations between the project

officer/grants management specialist and the principal investigator.

When multiple years are involved, awardees will be required to submit the PHS Non-Competing Grant Progress Report SF–424 (5161) application *http://www.hhs.gov/forms/PHS–5161–1.pdf*annually and financial statements as required in the DHHS Grants Policy Statement. Reports must be submitted 2 months prior to the next budget period start date. The Progress Report should include a report of the previous meeting supported by the current grant, as well as a full description of the next planned meeting.

IV. Mechanism of Support

A. Award Instrument

This funding opportunity will use the Research Demonstration Cooperative Agreements (U18) award mechanisms.

This funding opportunity uses just-in-time budget concepts. It also uses the nonmodular budget format. Applicants must complete and submit a detailed categorical budget the SF–424 application.

These agreements will be subject to all applicable policies and requirements that govern the grant programs of PHS, including 45 CFR part 92 and the PHS Grants Policy Statement.

Equipment purchased under this cooperative agreement is subject to the requirements of 45 CFR part 92.31, ''Real property.''

Applicants must adhere to the requirements of this Notice. Special Terms and Conditions regarding FDA regulatory requirements and adequate progress of the study may be part of the awards notice.

PHS strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

B. Eligibility

This cooperative agreement program is only available to State/territory/tribal agency feed/BSE regulatory programs that undertake inspections and related activities under section 702 of the act and who are currently not funded under this cooperative agreement.

C. Length of Support

It is anticipated that FDA will fund these grants at a level requested but not exceeding $250,000 total direct plus indirect costs for the first year. An additional year (1) of support up to approximately $250,000 (direct plus indirect costs) per year will be available, depending upon fiscal year appropriations and successful performance. The length of support will also depend on the nature of the project.

D. Funding Plan

Federal funds are currently available from FDA for this program. However, continued funding of a noncompetitive segment is contingent upon satisfactory progress as determined annually by FDA procedures, the receipt of a noncompeting continuation application, final yearly report and the availability of Federal funds. An estimated amount of $1 million is available in FY 2008. The number of projects funded will depend on the quality of the applications received and is subject to availability of Federal funds to support the projects.

V. Review Procedure and Criteria

All applications submitted in response to this request for applications (RFA) will first be reviewed for responsiveness by grants management and program staff. Responsiveness is defined as submission of a complete application packet on or before the required submission date as listed in the previous paragraphs. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts.

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria before the submission of their application. All technical or programmatic questions must be directed to the ORA program staff (see **ADDRESSES**). All administrative or financial questions must be directed to the Grants Management Staff (see **ADDRESSES**).

VI. Submission Requirements

FDA is accepting new applications for this program electronically via *http:www.grants.gov* (Grants.gov). To download the SF424 application forms for this Funding Opportunity Announcement (FOA), link to ''Apply for Grants'' and follow the directions provided on that site. A one-time registration is required for institutions at Grants.gov, link to ''Get Registered.'' The application receipt date is July 30, 2008.

Your organization will need to obtain a Data Universal Number System (DUNS) number as part of the Grants.gov registration process. The DUNS number is a 9–digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. The Dunn and Bradstreet number can be obtained by calling: 866–705–5711 or through the Web site at *http://www.dnb.com/us/*.

The applicant must also register in the Central Contractor Registration (CCR) database in order to be able to submit the application. Information about the CCR is available at *http://www.ccr.gov* or under the ''Organization Registration'' page of Grants.gov at:*http://www.grants.gov/applicants/organization_registration.jsp*

VII. Method of Application

A. Submission Instructions

The SF–424 (5161) application has several components. Some components are required, others are optional. The forms package associated with this FOA in Grants.gov (link to ''Apply for Grants '') includes all applicable components, required and optional.

B. Format for Application

A completed application in response to this FOA includes the data in the following components:

The face page of the application should indicate ''Response to Ruminant Feed Ban Support Project RFA–FDA–08–008.''

For information that should be addressed in the application, please see the full version of this RFA at *http://www.grants.gov*.

VIII. Legend

Unless disclosure is required by the Freedom of Information Act (FOIA) as amended (5 U.S.C. 552), as determined by the Freedom of Information (FOI) officials of the U.S. Department of Health and Human Services (HHS) or by a court, data contained in the portions of an application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: July 2, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–15561 Filed 7–8–08; 8:45 am]

BILLING CODE 4160–01–S

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.

Method for Detection and Quantification of PLK1 Expression and Activity

Description of Technology: Polo-like kinase 1 (Plk1) plays a role in the regulation of the cell cycle and control of cellular proliferation. Because Plk1 is associated with neoplastic transformation of human cells, expression of this protein has been proposed as a prognostic marker for many types of malignancies. In mammalian cells, four Plks exist, but their expression patterns and functions appear to be distinct from each other. Available for licensing is a Plk1 ELISA assay using peptide substrates that are specific for Plk1, in that they are phosphorylated and bound by Plk1, but not by the related polo kinases Plk2, Plk3 and Plk4.

By exploiting a unique Plk1-dependent phosphorylation and binding property, an easy and reliable ELISA assay has been developed to quantify Plk1 expression levels and kinase activity. With this highly sensitive assay, Plk1 activity can be measured with 2–20 microgram of total lysates without immunoprecipitation or purification steps. Since deregulated Plk1 expression has been suggested as a prognostic marker for a wide range of human malignancies, this assay may provide an innovative tool for assessing the predisposition for cancer development, monitoring cancer progression, and estimating the prognosis of various types of cancer patients.

Applications: Optimized PBIP1 polypeptides, a natural substrate of Plk1, with enhanced specificity and sensitivity over the native PBIP1 sequence.

ELISA assay to quantify Plk1 expression and kinase activity.

Advantages: Rapid, highly sensitive assay that requires lower amounts of starting material than conventional immunoprecipitation assays.

Assay that is selective for Plk1.

Development Status: The technology is currently in the pre-clinical stage of development.

Market: An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007. Cancer is the second leading cause of death in United States. It is estimated that the cancer therapeutic market would double to $50 billion a year in 2010 from $25 billion in 2006.

Inventors: Kyung Lee and Jung-Eun Park (NCI).

Publications: 1. J-E Park, L Li, K Strebhardt, SH Yuspa, and KS. Lee. Direct quantification of polo-like kinase 1 activity in cells and tissues using a highly sensitive and specific ELISA assay (about to be submitted).

2. KS Lee et al. Mechanisms of mammalian polo-like kinase 1 (Plk1) localization: self-versus non-self-priming. Cell Cycle 2008 Jan;7(2): 141–145.

3. KS Lee et al. Self-regulated mechanism of Plk1 localization to kinetochores: lessons from the Plk1–PBIP1 interaction. Cell Div. 2008 Jan 23;3:4.

4. YH Kang et al. Self-regulated Plk1 recruitment to kinetochores by the Plk1–PBIP1 interaction is critical for proper chromosome segregation. Mol Cell. 2006 Nov 3;24(3): 409–422.

Patent Status: U.S. Provisional Application No. 61/054,032 filed 16 May 2008 (HHS Reference No. E–091–008/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633.; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Metabolism is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the PLK1 ELISA assay described above. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Cripto-1 Represents a Biomarker for Chronic Inflammatory Diseases

Description of Technology: Chronic inflammatory bowel disease (IBD) (*e.g.* Crohn's disease and ulcerative colitis) and chronic inflammatory arthropathy such as rheumatoid arthritis represent an enormous socio-economic burden due to the cost for long term medication and rehabilitation and the decreased productivity due to periods of acute recurrences. A major characteristic of these diseases is the tissue infiltration of specific CD4+ T cells that sustain inflammation by secreting cytokines. One of these cytokines, TNF-alpha, is a current therapeutic target for the treatment of these chronic inflammatory diseases.

This technology describes Cripto-1 as a biomarker for chronic inflammatory diseases. Cripto-1, an epidermal growth factor (EGF)-related protein, shows higher expression levels in tissue sections of Crohn's disease, ulcerative colitis, and rheumatoid arthritis as compared to adjacent unaffected areas. Moreover, the inventors show that the response to Cripto-1 is not due to a generic immune response, and Cripto-1 expression increases the expression of TNF-alpha in CD4+ T cells in tissues affected by chronic inflammatory disease. As a result, this technology could be used as a diagnostic biomarker for chronic inflammatory diseases as well as a novel therapeutic target to help control TNF-alpha in chronic inflammatory diseases.

Applications: Diagnostic tool for the detection of a chronic inflammatory disease.

Method to inhibit cytokine production in a tissue affected with a chronic inflammatory disease.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Luigi Strizzi, David S. Salomon, Monica I. Gonzales (NCI).

Patent Status: U.S. Provisional Application No. 61/045,746 filed 17 Apr 2008 (HHS Reference No. E–075–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Mammary Biology and Tumorigenesis Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further

develop, evaluate, or commercialize Cripto-1 as a biomarker for chronic inflammatory diseases. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Cripto-1 as a Biomarker for Cardiac Ischemia

Description of Technology: Ischemic heart disease is a major cause of human cardiac morbidity and mortality, affecting over 14 million people in the United States alone. Current detection of cardiac ischemia relies upon identification of electrocardiographic anomalies and the release of cardiac markers from the damaged myocardial tissue. Unfortunately, patients with acute myocardial infarction are often insensitive to these tests during the early phases of intervention and as a result more markers for cardiac ischemic disease are needed.

This technology describes Cripto-1 as a biomarker for infarcted cardiac tissues. Cripto-1 is a member of the epidermal growth factor (EGF)-related proteins and is currently thought to play an important role in several cancers. The present invention shows that Cripto-1 is overexpressed in infarcted myocardial tissue, and not expressed or weakly expressed in non-infarct related heart disease tissues and normal tissues. Furthermore, the overexpression of Cripto-1 correlates with the hypoxia-inducible factor-1-alpha indicating specificity to ischemic heart tissue. The expression of Cripto-1 has also been shown to be highly expressed in stem cells, which may have an important role in the repair of damaged myocardial tissue. Thus, this technology could represent a new biomarker for the diagnosis of myocardial infarction as well as a surrogate biomarker to monitor the healing process including regenerative stem cell activity of the infarcted myocardial tissue.

Applications:

Diagnostic tool for the detection of myocardial infarction.

Method to monitor stem cell activity in damaged myocardial tissue.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Luigi Strizzi, Caterina Bianco, David S. Salomon (NCI).

Patent Status: U.S. Provisional Application No. 61/046,181 filed 18 Apr 2008 (HHS Reference No. E–049–2008/0-US–01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Mammary Biology and Tumorigenesis Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Cripto-1 as a biomarker for cardiac ischemia. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Identification of Persons Likely To Benefit From Statin Mediated Cancer Prevention by Pharmacogenetics

Description of Technology: Inhibitors of 3-hydroxy-3-methylglutaryl (HMG) coenzyme A reductase (statins) are a class of well-tolerated compounds that are the most widely used cholesterol-lowering drugs in the United States. Reduced cancer risk among statin users has also been observed as a secondary outcome in randomized controlled clinical trials evaluating effects of statins on cardiovascular outcomes. However the observed cancer risk reduction varied with different clinical studies. Thus there is a need to identify individuals who would benefit from treatment with statins.

The current invention describes a pharmacogenetic method to identify candidates who are most likely to benefit from treatment with statins to reduce cancer risk, and consequently minimizing any unnecessary cost and side effects in individuals who do not benefit. Specifically, we discovered that an HMGCR genetic variant rs12654264 is associated with significantly lower colorectal cancer risk, with most of the benefit seen in HMGCoA reductase inhibitor (statin) users. We also discovered that this same HMGCR genetic variant is associated with significantly higher serum cholesterol levels in Israeli colorectal cancer patients. The same HMGCR genetic variant has also been associated with significantly higher serum cholesterol levels in two independent groups of individuals of mixed European descent [*http://www.broad.mit.edu/diabetes/scandinavs/index.html* and *N Engl J Med.* 2008 March 20;358(12):1240–1249 (*http://www.ncbi.nlm.nih.gov/pubmed/18354102?dopt*)]. These data suggest that the same genetic variant modifies cholesterol metabolism in a manner that affects both colorectal cancer risk and cardiovascular risk.

Applications and Market: Statins account for approximately 80% of the cholesterol-lowering drugs prescribed in the United States, and six statins are currently available on the U.S. market. Reduced cancer risk is also associated with statin use. This invention provides a method to indentify individuals who are most likely to benefit from cancer chemopreventive treatment with statins.

Pharmacogenetic markers can be developed to identify patient population that can benefit from statins, therefore expanding the markets of stains.

Development Status: The inventors have discovered several novel genetic variants of HMG coenzyme A reductase gene, and are further investigating the functional significance of the variants in vitro.

Inventors: Dr. Levy Kopelovich (NCI) et al.

Patent Status: U.S. Provisional Application No. 60/985,587 filed 05 Nov 2007 (HHS Reference No. E–328–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Betty Tong, PhD; 301–594–6565; *tongb@mail.nih.gov*.

TGF-beta Gene Expression Signature in Cancer Prognosis

Description of Technology: Hepatocellular carcinoma (HCC) is the third leading cause of cancer death worldwide, and it is very heterogeneous in terms of its clinical presentation as well as genomic and transcriptomic patterns. This heterogeneity and the lack of appropriate biomarkers have hampered patient prognosis and treatment stratification.

Available for licensing is a novel temporal TGF-beta gene expression signature that predicts HCC patient clinical outcomes. Patients with tumors expressing late TGF-beta responsive genes had a malignant prognosis and an invasive tumor phenotype as evaluated by decreased survival time, increased tumor recurrence, and vascular invasion rate. Additionally, this signature may also be able to prognose other cancers, including lung cancer.

Applications: Method to diagnose cancer.

Method to monitor cancer progression and aid clinicians to choose appropriate therapies.

Commercial kits to prognose cancer.

Advantages: Early diagnostic tool to stratify HCC patients to chose more effective treatment.

Development Status: The technology is currently in the pre-clinical stage of development.

Market: An estimated 1,444,920 new cancer diagnosed in the U.S. in 2007.

Cancer is the second leading cause of death in United States.

It is estimated that the cancer therapeutic market would double to $50 billion a year in 2010 from $25 billion in 2006.

Inventors: Snorri Thorgeirsson (NCI) and Cedric Coulouaran (NCI)

Relevant Publication: Coulouaran C, Factor VM, Thorgeirsson SS. Transforming growth factor-beta gene expression signature in mouse hepatocytes predicts clinical outcome in human cancer. Hepatology 2008 Jun;47(6):2059–2067.

Patent Status: U.S. Provisional Application No. 60/981,661 filed 22 Oct 2007 (HHS Reference No. E–282–2007/0-US–01)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Laboratory of Experimental Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a novel temporal TGF-beta gene expression signature that predicts HCC patient clinical outcomes. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A New Pot1 Variant Gene as a Diagnostic Biomarker for Hereditary Non-polyposis Colorectal Cancer

Description of Technology: The diagnosis of Hereditary Nonpolyposis Colorectal Cancer (HNPCC) is difficult because the disease lacks phenotypic signs that might facilitate its presymptomatic diagnosis. This invention is based on the identification of a new splice variant of a gene that appears to exist specifically in HNPCC, namely ''Pot1'' or ''Protection of Telomeres.'' Pot1 has a critical role in ensuring chromosome stability by binding to telomeres. The invention presents a variant of Pot1 that is present in mismatch repair-deficient, but not proficient, cancer cell lines and primary, non-tumor tissue samples. The presence of this variant may be useful both as a diagnostic marker for HNPCC, and as a new therapeutic target for the treatment of HNPCC.

Applications and Modality: Identification of new ''Pot1'' variant gene associated with HNPCC

New gene can be used as a potential diagnostic biomarker for the diagnosis of HNPCC.

Pot1 as a new therapeutic target for the treatment of HNPCC.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Qin Yang and Curtis C. Harris (NCI).

Related Publications:

1. P Baumann *et al.* Human Pot1 (protection of telomeres) protein: cytolocalization, gene structure, and alternative splicing. Mol Cell Biol. 2002 Nov;22(22):8079–8087.

2. A Umar *et al.* Revised Bethesda Guidelines for hereditary nonpolyposis colorectal cancer (Lynch syndrome) and microsatellite instability. J Natl Cancer Inst. 2004 Feb 18;96(4):261–268.

3. HT Lynch *et al.* Hereditary nonpolyposis colorectal carcinoma (HNPCC) and HNPCC-like families: Problems in diagnosis, surveillance, and management. Cancer. 2004 Jan 1;100(1):53–64.

4. Q Yang *et al.* Functional diversity of human protection of telomeres 1 isoforms in telomere protection and cellular senescence. Cancer Res. 2007 Dec 15;67(24):11677–11686.

Patent Status: U.S. Provisional Application No. 60/620,754 filed 20 Oct 2004 (HHS Reference No. E–263–2004/0–US–01), entitled ''POT1 Alternating Splice Variants''

International Patent Application No. PCT/US2005/037957 filed 19 Oct 2005, which published as WO 2006/045062 on 27 Apr 2006 (HHS Reference No. E–263–2004/0–PCT–02)

U.S. Patent Application No. 11/665,944 filed 20 Apr 2007 (HHS Reference No. E–263–2004/0-US–03).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Laboratory of Human Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize biomarkers of colon cancer. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: June 30, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–15562 Filed 7–8–08; 8:45 am]

BILLING CODE 4140–01–P

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(cX6), 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: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors-2.

Date: July 14, 2008.

Time: 1 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: Richard Panniers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Member Conflict Applications from BSPH and ACE.

Date: July 28, 2008.

Time: 10 a.m. to 2 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: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.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. 93.306, 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: July 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15469 Filed 7–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee; Ethics Subcommittee.

Date: July 29, 2008.

Time: 10 a.m. to 12 p.m.

Agenda: The agenda items will include the NCS informed consent with specific reference to genetics. For questions or to register call Circle Solutions at (703) 902–1339 or via e-mail *ncsinfo@mail.nih.gov.* Public observers must attend in person at 6100 Executive Blvd, Room 5A01.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jessica Sapienza, Adjunct Study Program Analyst, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892, (703) 902–1339, *ncsinfo@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15467 Filed 7–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP); Request for Information (RFI): High Throughput Screening (HTS) Approaches for Toxicology

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for Information (RFI) and notice of public meeting.

SUMMARY: This notice is for planning purposes only. It does not constitute a solicitation or Request for Proposal (RFP), nor does it restrict the Government as to the ultimate acquisition approach. The Government does not intend to award a contract on the basis of this RFI or to otherwise pay for the information solicited. Any contract that might be awarded based on information received or derived from this RFI will be the outcome of the competitive process. Any purchases that might result from information received or derived from this RFI will be at the discretion of the Government.

Purpose: To ensure development of a rigorous and comprehensive battery of HTS assays, the NTP seeks information and comments on the identification and selection of critical cellular toxicity pathways for interrogation in cell-based high throughput screens. The NTP is also interested in receiving recommendations on particular molecular targets within these critical cellular toxicity pathways that are most informative for profiling the pathways, both in cell-based and biochemical assay formats. In addition to information on cellular pathways and targets, the NTP seeks information on technologies and assay systems that might be used in the development of a comprehensive approach to high throughput toxicity screening.

Responses to RFI: The Government requests a brief (no more than 1 page) description of the proposed presentation addressing one or more of the points listed below or other directly related topics. In considering responses to this RFI, please keep in mind the assay protocol requirements for assays run at the NIH Chemical Genomics Center (NCGC) (*http://www.ncgc.nih.gov/guidance/HTS_Assay_Guidance_Criteria.html*).

- Recommendations on the identification and selection of critical cellular pathways involved in toxicity and associated with a phenotypic manifestation of toxicity in vivo (disease outcome).
- Information on assays that can be used to measure the activity of a compound on a target within a critical pathway.
- Information on the selection of the best targets within pathways and networks in order to accurately and fully characterize the activity of a compound within a specific pathway or the ability of a compound to trigger a stress-responsive pathway resulting in a defined toxicity or disease.
- Information on assays, technologies, or methods that will aid in identifying compounds which are active only after metabolic activation.
- New technologies or technologies under development that can be exploited in HTS programs, such as those underway at the NCGC or as secondary, targeted, follow-up testing to expand and more carefully characterize the findings from initial screens.

All responses should include the following information: Company name, company address, name of presenter, telephone number, and e-mail address. Responses should be submitted by August 11, 2008, either electronically via the meeting Web site or by fax, e-mail, or mail to: Jennifer Smith, Contract Specialist, NIEHS, P.O. Box 12874, Mail Drop EC–02, 79 T.W. Alexander Drive, Building 4401, Room 134, Research Triangle Park, NC 27709; fax: 919–541–2712; e-mail: *smithj3@niehs.nih.gov.* Responses will be reviewed to ensure that the Government, by extending an invitation to a party to participate in the RFI meeting, will receive information directly relevant to its HTS program for toxicity assessment and that the party fully understands the nature of the meeting and the type of information sought. Acknowledgement of receipt of responses will not be made nor will respondents be notified of the Government's assessment of the information received. No basis for claims against the Government shall arise as a result of a response to this request for information or in the Government's use of such information as either part of its evaluation process or to develop specifications for any subsequent announcement. Responses will not be returned. The summarized responses (without identifiers) may appear in internal reports or be made

public. Although the NIH will provide safeguards to prevent the release of identifying information, there is no guarantee of confidentiality.

Attendance and Registration: An informational public meeting will be held on September 11–12, 2008, at the National Institute of Environmental Health Sciences, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Attendance at the meeting is limited only by the available space. The purpose of this meeting is for interested parties to provide the Government information about assays, molecular targets, and cellular pathways through brief presentations and a question and answer session.

Parties interested in making a presentation at the meeting must register on the meeting Web site: (*http://ntp.niehs.nih.gov/go/32908*). Attendees not making presentations are also encouraged to register at the Web site for planning purposes. The Government anticipates that registered presenters will be allotted 20 minutes each for presentations (limit of one speaker per organization); however, the Government retains the right to limit the number of presentations and/or limit the allotted time for presentations based upon the number of registered presenters. Presenters will be notified about the scheduled order of presentations and the list of presenters will be posted on the meeting Web site at least one week prior to the meeting. It is anticipated that the meeting will include time for questions and information exchange. The slides from the presentations may appear in internal reports or be made public. Further information will be made available on the meeting Web site. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). For other special accommodations while on NIEHS campus, contact 919–541–2475 or e-mail *niehsoeeo@niehs.nih.gov.*

DATES: The informational public meeting will be held on September 11–12, 2008. Registration deadline for presenters is August 11, 2008. The number of registered presenters will be limited to approximately 25. The date for submission of the 1-page description of the presentation is also August 11 (see ''Responses to RFI''). Non-presenters may register online through September 9, 2008, or until capacity is reached.

Contact Information: Questions regarding RFI submissions should be directed to Jennifer Smith, Contract Specialist, at 919–541–0424 or e-mail *smithj3@niehs.nih.gov.* Questions and answers will be posted on the NTP Web site *http://ntp.niehs.nih.gov/go/32908* as a resource to all prospective participants (any identifying information will be removed before posting). Questions regarding meeting registration and agenda should be directed to Kristine Witt, 919–541–2761 or e-mail *witt@niehs.nih.gov.*

Background

The National Toxicology Program (NTP) in facilitating the ''Roadmap for the 21st Century'' (available at *http://ntp.niehs.nih.gov/go/vision*) is interested in identifying or developing rapid, mechanism-based predictive screening assays for use in toxicity determinations. Through its High Throughput Screening (HTS) Initiative (*http://ntp.niehs.nih.gov/go/hts*), the NTP is collaborating with the U.S. Environmental Protection Agency (EPA) ToxCast Program (*http://epa.gov/ncct/toxcast/*) and the National Human Genome Research Institute's NIH Chemical Genomics Center (NCGC) (*http://www.ncgc.nih.gov/index.html*) to investigate the application of HTS approaches for defining toxicity profiles of environmental compounds to use in hazard identification and risk assessment.

Dated: June 27, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8–15560 Filed 7–8–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting for the Center for Mental Health Services (CMHS) National Advisory Council on July 23 and July 24, 2008.

A portion of the meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments. The meeting will also include the review, discussion and evaluation of grant applications. Therefore the meeting will be partially closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. section 10(d).

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CMHS Council's Designated Federal Official, Ms. Dianne McSwain (see contact information below), to make arrangements to attend, comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting and a roster of Council members may be obtained either by accessing the Council's Web site at *https://www.nac.samhsa.gov/CMHScouncil/index.aspx* as soon as possible after the meeting, or by contacting Ms. McSwain. The transcript of the open portion of the meeting will be available on the Council's Web site within three weeks after the meeting.

Committee Name: Center for Mental Health Services National Advisory Council.

Date/Time/Type:

July 23, 2008:

From 9 a.m.–11:30 a.m.: CLOSED.

From 11:40 a.m.–4:30 p.m.: OPEN.

July 24, 2008:

From 9 a.m.–1 p.m.: OPEN.

Place(s): 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Dianne McSwain, M.S.W., Designated Federal Official, SAMHSA/CMHS National Advisory Council, 1 Choke Cherry Road, Rm. 6–1063, Rockville, Maryland 20857, Telephone: (240) 276–1828, Fax: (240) 276–1850, E-mail: *Dianne.McSwain.@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E8–15541 Filed 7–8–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zones Buffalo,

Duluth, Detroit, Lake Michigan, and Sault Ste. Marie.

SUMMARY: This Notice informs owners and operators of facilities located within Captain of the Port Zones Buffalo, Duluth, Detroit, Lake Michigan, and Sault Ste. Marie that they must implement access control procedures utilizing TWIC no later than October 31, 2008.

DATES: This Notice is effective July 9, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, 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 Notice, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels, facilities, and outer continental shelf facilities, who have not otherwise been required to implement access control procedures utilizing TWIC, must implement those procedures, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as laid out in 33 CFR 105.115(e). On the same day, the Coast Guard announced the first of the rolling compliance dates and owners and operators of facilities located within Captain of the Port (COTP) Zones Boston, Northern New England, and Southeastern New England were informed that they must implement access control procedures utilizing TWIC no later than October 15, 2008. 73 FR 25757.

The Coast Guard will continue to announce rolling compliance dates, as laid out in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zones Buffalo, Duluth, Detroit, Lake Michigan, and Sault Ste. Marie

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**.'' Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zones Buffalo, Duluth, Detroit, Lake Michigan, and Sault Ste. Marie that the deadline for their compliance with Coast Guard and TSA TWIC requirements is October 31, 2008.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for these COTP Zones to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in one of these COTP Zones to enroll for their TWIC as soon as possible, if they haven't already. Information on enrollment procedures, as well as a link to the pre-enrollment website (which will also enable an applicant to make an appointment for enrollment), may be found at *https://twicprogram.tsa.dhs.gov/TWICWebApp/.*

You may also visit our Web site at homeport.uscg.mil/twic for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that website. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: July 2, 2008.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.

[FR Doc. E8–15489 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1771–DR]

Illinois; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–1771–DR), dated June 24, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2008, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms and flooding beginning on June 1, 2008, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of June 24, 2008, to authorize Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs. This adjustment is effective until the respective date at which the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center reports that the rivers in the State of Illinois which have experienced historical flooding, fall below flood stage.

This adjustment cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under applicable law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15531 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1766–DR]

Indiana; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 2008.

Hendricks and Tippecanoe Counties for Individual Assistance.

Adams, Gibson, and Posey Counties for Public Assistance (already designated for Individual Assistance.)

Franklin, Ohio, and Union Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Hendricks and Switzerland Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15528 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1766–DR]

Indiana; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2008, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms, flooding, and tornadoes beginning on May 30, 2008, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of June 8, 2008, to authorize Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs. This adjustment is effective until the respective date at which the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center reports that the rivers in the State of Indiana, which have experienced historical flooding, fall below flood stage.

This adjustment cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under applicable law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially

Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15538 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1763–DR]

Iowa; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1763–DR), dated May 27, 2008, and related determinations.

EFFECTIVE DATE: June 28, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 27, 2008.

Lucas County for Individual Assistance.

Dallas, Davis, Iowa, Mitchell, and Worth Counties for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15526 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1763–DR]

Iowa; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–1763–DR), dated May 27, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2008, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, tornadoes, and flooding beginning on May 25, 2008, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of May 27, 2008, to authorize Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs. This adjustment is effective until the respective date at which the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center reports that the rivers in the State of Iowa, which have experienced historical flooding, fall below flood stage.

This adjustment cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under applicable law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15527 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1763–DR]

Iowa; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1763–DR), dated May 27, 2008, and related determinations.

EFFECTIVE DATE: June 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 27, 2008.

Davis, Henry, Lyon, Palo Alto, Pocahontas, Pottawattamie, and Van Buren Counties for Public Assistance.

Des Moines, Lee, and Muscatine Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15529 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2008.

Andrew, Atchison, and Holt Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Clark, Lewis, Lincoln, Marion, Pike, Ralls, and St. Charles Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15532 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

EFFECTIVE DATE: June 28, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include Individual Assistance and Hazard Mitigation in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2008.

Clark, Lewis, Lincoln, Marion, Pike, Ralls, and St. Charles Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

All jurisdictions in the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15533 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2008, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms and flooding beginning on June 1, 2008, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of June 25, 2008, to authorize Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs. This adjustment is effective until the respective date at which the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center reports that the rivers in the State of Missouri, which have experienced historical flooding, fall below flood stage.

This adjustment cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under applicable law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15540 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1769–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1769–DR), dated June 19, 2008, and related determinations.

EFFECTIVE DATE: June 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 19, 2008.

Wetzel County for Individual Assistance.

Tucker County for Individual Assistance and Public Assistance.

Braxton, Calhoun, Lewis, Ritchie, Webster, and Wirt Counties for Public Assistance.

Tyler County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15535 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

EFFECTIVE DATE: June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2008, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Wisconsin resulting from severe storms, tornadoes, and flooding beginning on June 5, 2008, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of June 14, 2008, to authorize Federal funds for emergency protective measures, including direct Federal assistance, at 90 percent Federal funding of total eligible costs. This adjustment is effective until the respective date at which the National Oceanic and Atmospheric Administration's National Weather Service River Forecast Center reports that the rivers in the State of Wisconsin, which have experienced historical flooding, fall below flood stage.

This adjustment cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under applicable law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared

Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15530 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

EFFECTIVE DATE: June 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2008.

Manitowoc County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15537 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1770–DR]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1770–DR), dated June 20, 2008, and related determinations.

EFFECTIVE DATE: June 24, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 24, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15547 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

EFFECTIVE DATE: June 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the Public Assistance program in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2008.

Lafayette and Monroe Counties for Public Assistance.

Adams, Columbia, Crawford, Dane, Dodge, Grant, Iowa, Milwaukee, Richland, Sauk, Vernon, and Winnebago Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15536 Filed 7–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–21]

Notice of Proposed Information Collection: Comment Request; Management Reviews of Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 8, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Housing Program Manager, Office of Multifamily Housing Programs, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1320 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Reviews of Multifamily Housing Projects.

OMB Control Number, if applicable: 2502–0178.

Description of the need for the information and proposed use: HUD staff, Mortgagees, and Contract Administrators complete the form HUD–9834 during on-site reviews. The information gathered from the form is used to evaluate the quality of management, determine causes of problems, and devise corrective actions to safeguard the Department's financial interest and ensure that tenants are provided with decent, safe, and sanitary housing.

Agency form numbers, if applicable: HUD–9834.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 203,912. The number of respondents is 25,489, the number of responses is 25,489, the frequency of response is annually, and the burden hour per response is 8.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–15507 Filed 7–8–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5194–N–11]

Notice of Proposed Information Collection: Extension of Comment Request; Management Review for Public Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection, extension.

SUMMARY: This notice is being republished to extend the comment period until August 31, 2008. This notice was previously published on February 8, 2008 and republished on April 1, 2008 to extend the comment period until June 30, 2008. The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 30, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_I._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 8, 2008 (73 FR 7575), this notice informed the public that the U.S. Department of Housing and Urban Development (HUD) would be soliciting comments from the public on the subject proposal. On April 1, 2008, this notice was republished to extend the comment period until June 30, 2008. The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Review of Public Housing Projects.

OMB Control Number: 2577-Pending.

Description of the need for the information and proposed use: On September 19, 2005 (70 FR 54983), HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990, which was developed through negotiated rulemaking. Part 990 provides a new formula for distributing operating subsidy to public housing agencies (PHAs) and establishes requirements for PHAs to convert to asset management.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290) establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. However, for the current fiscal year, that regulation is superseded by Section 225 of Title II of Division K of the Consolidated Appropriations Act, 2008, Pub. L. 110–161 (approved December 26, 2007). Under that law, PHAs that own or operate 400 or fewer units may elect to transition to asset management, but they are not required to do so.

To support the transition to asset management and align HUD oversight with asset management, a new management review format is required to review PHAs on a project level, rather than PHA-wide. The forms are modeled after the asset management model consistent with the management norms in the broader multifamily industry.

Agency form numbers: Forms HUD–5834, HUD–5834–A, and HUD–5834–B.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: For form HUD–5834, Management Review of Public Housing Projects, there are 3,282 respondents annually with one response per respondent. Average time per response is .95 hours and the total burden hours are 3,118 hours. For form HUD–5834–A, Tenant File Review, there are 821 respondents annually with one response per respondent. Average time per response is .50 hours and the total burden hours are 410.50 hours. For form HUD–5834–B, Upfront Income Verification Review, there are 821 respondents annually with one response per respondent. Average time per response is .50 hours and the total burden hours are 410.50 hours.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2008.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs and Legislative Initiatives.

[FR Doc. E8–15508 Filed 7–8–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0009]

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0073).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 220. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The previous title of this ICR was ''30 CFR Part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases, § 220.010 NPSL capital account, § 220.030 Maintenance of records, § 220.031 Reporting and payment requirements, § 220.032 Inventories, and § 220.033 Audits.'' The new title of this ICR is ''30 CFR Part 220, OCS Net Profit Share Payment Reporting.'' There are no forms associated with this information collection.

DATES: Submit written comments on or before *August 8, 2008.*

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0073).

Please submit copies of your comments to MMS by the following methods:

- Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0008'' 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 Armand Southall, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0073 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 1010–0073 in your comments.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231–3221, or e-mail *armand.southall@mms.gov.* You may also contact Mr. Southall to obtain copies, at no cost, of (1) the ICR and (2) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 220, OCS Net Profit Share Payment Reporting.

OMB Control Number: 1010–0073.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal lands and the Outer Continental Shelf (OCS). The Secretary is responsible for managing the production of minerals from Federal 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 MMS performs the mineral revenue management functions for the Secretary.

The MMS collects and uses this information to determine all allowable direct and allocable joint costs incurred during the lease term, appropriate overhead allowance permitted on these costs under § 220.012, and allowances for capital recovery calculated under § 220.020. The MMS also collects this information to ensure royalties or net

profit share payments are accurately valued and appropriately paid. This ICR affects only oil and gas leases on submerged Federal lands on the OCS.

Applicable legal citations pertaining to mineral leases include Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982); Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996), as corrected by Public Law 104–200—Sept. 22, 1996; the Mineral Leasing Act of 1920 (30 U.S.C. 1923); and the Outer Continental Shelf Lands Act (43 U.S.C. 1353). These citations can be viewed at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

Title 30 CFR part 220 covers the net profit share lease (NPSL) program and establishes reporting requirements for determining the net profit share base and calculating net profit share payments due the Federal Government for the production of oil and gas from OCS leases.

Net Profit Share Leases (NPSL) Bidding System

To encourage exploration, development, and production of oil and gas lease resources on submerged Federal lands on the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR part 260—Outer Continental Shelf Oil and Gas Leasing. Part 260, subpart B establishes the bidding systems that MMS may use to offer and sell Federal leases. Specific implementation regulations for the NPSL bidding system are promulgated at § 260.110(d) of part 260, subpart B. The MMS established the NPSL bidding system to balance a fair market return to the Federal Government for the lease of its public lands with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for sharing the risks by the lessee and the Federal Government. The NPSL bidding system incorporates a fixed capital recovery system as a means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

NPSL Capital Account Payment Reporting

Under § 220.031(b), the lessee report and pay NPSL payment due the Federal Government beginning with the first month in which production revenues are credited to the NPSL capital account not later than 60 days following the end of each month.

The Federal Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. The credit balance is multiplied by the net profit share rate (30 to 50 percent), resulting in the amount of net profit share payment due the Federal Government.

The MMS requires lessees to maintain an NPSL capital account for each lease, which transfers to a new owner when sold. Following the cessation of production, lessees are also required to provide either an annual or a monthly report to the Federal Government, using data from the capital account.

NPSL Inventories

The NPSL lessees must notify MMS of their intent to perform an inventory and file a report after each inventory of controllable materiel.

NPSL Audits

When non-operators of an NPSL call for an audit, they must notify MMS. When MMS calls for an audit, the lessee must notify all non-operators on the lease. These requirements are located at § 220.033.

Summary

This collection of information is necessary in order to determine when net profit share payments are due and to ensure royalties or net profit share payments are properly valued and appropriately paid.

The MMS will request OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duty and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 6 lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,046 hours.

All six lessees report monthly because all current NPSLs are in producing status. Because the requirements for establishment of capital accounts at § 220.010(a) and capital account annual reporting at § 220.031(a) are necessary only during non-producing status of a lease, we included only one response annually for these requirements, in case a new NPSL is established. We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary. The following chart shows the estimated annual burden hours by CFR section and paragraph.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 220	Reporting & recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
Part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases				
§ 220.010 NPSL capital account				
220.010(a)	(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations * * *.	1	1	1
§ 220.030 Maintenance of records				
220.030(a) and (b)	(a) Each lessee * * * shall establish and maintain such records as are necessary * * *.	1	6	6

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 220	Reporting & recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
§ 220.031 Reporting and payment requirements				
220.031(a)	(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account * * *.	1	1	1
220.031(b)	(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month * * *.	13	72 [1]	936
220.031(c)	(c) Each lessee subject to this Part 220 shall submit, together with the report required * * * any net profit share payment due * * *.	Burden hours covered under § 220.031(b).		
220.031(d)	(d) Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *.	8	6	48
220.031(e)	(e) Each lessee * * * shall file a final report, not later than 60 days following the cessation of production * * *.	4	6	24
§ 220.032 Inventories				
220.032(b)	(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory * * *.	1	6	6
§ 220.033 Audits				
220.033(b)(1)	(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call * * *.	2	6	12
220.033(b)(2)	(b)(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit * * *. The lessee shall send copies of the notice to the nonoperators on the lease * * *.	2	6	12
220.033(e)	(e) Records required to be kept under § 220.030(a) shall be made available for inspection by any authorized agent of DOI * * *.	The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.		
Total Burden			110	1,046

[1] (6 NPSL reports × 12 months = 72 reports).

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour cost'' burdens.

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.

To comply with the public consultation process, we published a notice in the **Federal Register** on October 2, 2007 (72 FR 56090), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 8, 2008.

Public Comment Policy: We will post all comments in response to this notice

at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm* . We will also 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, 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 view, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: May 6, 2008.

Shirley M. Conway,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E8–15495 Filed 7–8–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket ID: MMS–2008–OMM–0032]

MMS Information Collection Activity: 1010–0164 (Damage Caused by Hurricanes), Extension of a Collection; Submitted for Office of Management and Budget Review; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (1010–0164).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget for review and approval. The information collection request concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart I, Platforms and Structures, Notice to Lessees and Operators—Damage Caused by Hurricane(s). This request covers damage due to any hurricane(s) that may occur in the Gulf of Mexico over the next 3 years.

DATE: Submit written comments by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and the Notice to Lessees and Operators that requires the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov.* Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS–2008–OMM–0032 to submit public comments and to view supporting and related materials available for this rulemaking. 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. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0164 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart I, Platforms and Structures, Notice to Lessees and Operators (NTL)—Damage Caused by Hurricane(s).

OMB Control Number: 1010–0164.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; preserve and maintain free enterprise competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. Section 43 U.S.C. 1332(6) states that ''operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

To carry out these responsibilities, Minerals Management Service (MMS) issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. In addition, we also issue NTLs that provide clarification, explanation, and interpretation of our regulations. These NTLs are used to convey purely informational material and to cover situations that might not be adequately addressed in our regulations. The latter is the case for the information collection required in the NTL. Because of the unusual nature of this information collection, issuing a temporary NTL is the appropriate means to collect the information.

The subject of this information collection request (ICR) is an NTL titled, *Damage Caused by Hurricane(s)* to be issued to lessees and operators in the MMS Gulf of Mexico OCS (GOM) Region after a hurricane occurs. This ICR deal with damage to facilities due to any hurricane(s) that may occur in the GOM. Once this ICR is approved by OMB, MMS will reissue the NTL for each new future hurricane that impacts operations in the GOM with MMS inserting the appropriate hurricane name, longitudes, and dates of submittal, etc.

Currently, there are over 4,000 facilities/structures in the GOM OCS. The MMS anticipates that potential major hurricanes may impact 40 percent or more of the platforms in the GOM (1,600 facilities) during any one event. For example, in 2005, Hurricanes Katrina and Rita combined affected approximately 2,900 OCS facilities—only 10 facilities were affected by both storms; they each followed different paths and had their own specific meteorological anomalies (deviation or departure from the normal phenomena of the atmosphere). It needs to be stressed that the information we collect under this NTL is information that a prudent lessee/operator would prepare in the event of a major hurricane. The primary authority for this submission is *30 CFR Part 250, Subpart I, Platform and Structures*, information collection

approved under the OMB Control Number 1010–0149. However, in connection with this subpart, MMS believes that the burden hour requirements in the proposed NTL are in addition to the currently approved paperwork burden under those requirements.

With regard to the OCS Pipelines section of this NTL, MMS has the authority to collect the information requested under *30 CFR Part 250, Subpart J, Pipelines and Pipeline Rights-of-Way.* The OMB has already approved the collection of pipeline information under OMB Control Number 1010–0050.

Emergency NTLs were issued relating to this same subject—structural damage caused by hurricanes—in 2003 after Hurricane Lili, in 2004 after Hurricane Ivan, and in 2005 after Hurricanes Katrina and Rita. Due to the nature of these incidents and their increasing occurrences, immediately after Hurricane Ivan, proposed rulemaking was started to require lessees to submit to MMS information about structure damage on the OCS due to natural phenomena, e.g., hurricanes, earthquakes. The final rule is currently in the surnaming process and OMB has issued Regulation Identifier Number 1010–AD18.

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.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Monthly; and as specified in the NTL.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 26,880 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Reporting requirement	Hour burden
Prepare and submit to MMS: (1) List of impacted OCS structures, (2) timetable for inspections, and (3) inspection plan for each listed platform describing work to determine condition of structure	12
Submit amendments to list and inspection plans	12
Submit report to MMS describing detected damage that may adversely affect structural integrity, including assessment of ability to withstand anticipated environmental storm conditions, and any remediation plans	120

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: 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.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, 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, and record storage facilities. You should not include estimates for 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 submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: June 26, 2008.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E8–15497 Filed 7–8–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 1, 2008, a proposed Stipulation and Order was lodged with the United States District Court for the District of Massachusetts (the ''Court'') in the matter of *United States* v. *Metropolitan District Commission and Massachusetts Water Resources Authority, et al.*, Civil Action No. 85–0489–RGS.

In a Supplemental Complaint against the Massachusetts Water Resources Authority (the ''MWRA'') submitted to the Court in this matter, the United States is seeking injunctive relief and civil penalties against the MWRA for

claims arising under the Clean Water Act in connection with the operation of the MWRA's secondary treatment facilities located at the Deer Island Treatment Plant (''DITP'') on Deer Island in Boston Harbor. Under the Stipulation and Order, the MWRA will pay a civil penalty of $305,000, perform three Supplemental Environmental Projects estimated to cost a total of $305,000, and maintain a secondary treatment process limit at the DITP of at least 700 million gallons per day. The three Supplemental Environmental Projects require the removal of debris from eight tributaries to Boston Harbor, the provision of a pumpout boat to the City of Boston to be used by the City of Boston to pump sewage out of commercial vessels in Boston Harbor and vicinity, and the installation of low flow toilets in public buildings within communities in the MWRA sewer service area to reduce sewage discharge volumes and save water.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulation and Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Metropolitan District Commission and Massachusetts Water Resources Authority, et al.*, D.J. Ref. No. 90–5–1–1–08992.

The Stipulation and Order may be examined at the Office of the United States Attorney, John J. Moakley, U.S. Court House, 1 Courthouse Way, Suite 9200, Boston, MA 02210, and U.S. EPA, Region I, One Congress Street, Boston, Massachusetts 02203. During the public comment period, the Stipulation and Order may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Stipulation and Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–15534 Filed 7–8–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 2, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Procedure for Application for Exemption from the Prohibited Transaction Provisions of Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA).

OMB Control Number: 1210–0060.

Affected Public: Private Sector—Business or other for-profits.

Total Estimated Number of Respondents: 80.

Total Estimated Annual Burden Hours: 1,958.

Total Estimated Annual Costs Burden: $7,937.

Description: Section 408(a) of ERISA authorizes the Secretary of Labor to grant exemptions from the prohibited transaction sections of 406 and 407(a) of ERISA and directs the Secretary to establish a procedure with respect to such provisions. This regulation provides a procedure that requires applications for exemption to make certain disclosures to the Department of Labor and to participants and beneficiaries. For additional information, see related notice published at 73 FR 18301 on April 3, 2008.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Application for EFAST–1 Electronic Signature and Codes for EFAST Transmitters and Software Developers.

OMB Control Number: 1210–0117.

Affected Public: Private Sector—Business or other for-profits.

Total Estimated Number of Respondents: 8,200.

Total Estimated Annual Burden Hours: 2,733.

Total Estimated Annual Costs Burden: $3,444.

Description: Form EFAST–1 is used by filers of Forms 5500 and 5500–EZ and software developers who wish to participate in an electronic filing program. EFAST–1 will transmit filer signatures and declarations to EFAST so that program participants may receive secure codes for electronic transmission.

For additional information, see related notice published at 73 FR 18002 on April 2, 2008.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Consent To Receive Employee Benefit Plan Disclosures Electronically.

OMB Control Number: 1210–0121.

Affected Public: Private Sector—Business or other for-profits.

Total Estimated Number of Respondents: 40,000.

Total Estimated Annual Burden Hours: 7,000.

Total Estimated Annual Costs Burden: $170,000.

Description: Regulations at 29 CFR 2520.104b–1 and 2520.107–1 govern the use of electronic technologies to satisfy information disclosure and recordkeeping requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Generally, consent is required to be obtained prior to providing disclosures electronically to participants and beneficiaries at a location other than the workplace. For additional information, see related notice published at 73 FR 18001 on April 2, 2008.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–15515 Filed 7–8–08; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Literature (application review): July 30–August 1, 2008 in Room 730. A portion of this meeting, from 12 p.m. to 12:30 p.m. on August 1st, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on July 30th and 31st, and from 9 a.m. to 12 p.m. and 12:30 p.m. to 4:30 p.m. on August 1st, will be closed.

AccessAbility (application review): August 13–14, 2008 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on August 13th and from 9 a.m. to 5:30 p.m. on August 14th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 3, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–15520 Filed 7–8–08; 8:45 am]

BILLING CODE 7537–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 4, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Faculty Research Awards in Faculty Research Awards, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
2. *Date:* August 5, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Anthropology and Archaeology in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
3. *Date:* August 6, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Ancient and Classical Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
4. *Date:* August 6, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for Medieval and Renaissance Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
5. *Date:* August 7, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review

applications for Latin American Studies I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

6. *Date:* August 7, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for Latin American Studies II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
7. *Date:* August 11, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for American Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
8. *Date:* August 11, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for American Arts in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
9. *Date:* August 12, 2008.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Film, Media, and Communication in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
10. *Date:* August 12, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 415.
    Program: This meeting will review applications for American History I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
11. *Date:* August 13, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 315.
    Program: This meeting will review applications for American History II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
12. *Date:* August 13, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 415.
    Program: This meeting will review applications for American History III in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
13. *Date:* August 14, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 315.
    Program: This meeting will review applications for Romance Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
14. *Date:* August 14, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 415.
    Program: This meeting will review applications for Art History in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
15. *Date:* August 18, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 315.
    Program: This meeting will review applications for European History I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.
16. *Date:* August 18, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 415.
    Program: This meeting will review applications for European History II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–15585 Filed 7–8–08; 8:45 am]

BILLING CODE 7536–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on July 24–25, 2008.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 24–25, 2008, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on July 24, 2008, will be as follows:

Committee Meetings

(Open to the Public.)
Policy Discussion.

9–10:30 a.m.:
Challenge Grants and Research Programs—Room 315; Digital Humanities and Preservation and Access—Room 415; Education Programs—Room M–07; Federal/State Partnership—Room 510A; Public Programs—Room 421.

(Closed to the Public.)
Discussion of specific grant applications and programs before the Council.

10:30 a.m. until Adjourned:
Challenge Grants and Research Programs—Room 315; Digital Humanities and Preservation and Access—Room 415; Education Programs—Room M–07; Federal/State Partnership—Room 510A; Public Programs—Room 421;

2:30–3:30 p.m.:
National Humanities Medals—Room 527.

The morning session of the meeting on July 25, 2008, will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks;
2. Staff Report;
3. Congressional Report;
4. Reports on Policy and General Matters:
   a. Challenge Grants;
   b. Research Programs;
   c. Digital Humanities;
   d. Preservation and Access;
   e. Education Programs;
   f. Federal/State Partnership;
   g. Public Programs;
   h. National Humanities Medals.

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. E8–15597 Filed 7–8–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2008–0368]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Registration Certificate In-Vitro. Testing with Byproduct Material under General License.

2. *Current OMB approval number:* 3150–0038.

3. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

4. *Who is required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

5. *The number of annual respondents:* 85.

6. *The number of hours needed annually to complete the requirement or request:* 12.4 hours (Record keeping: 1.13 hours + Reporting: 2 hours NRC licensees and 9.3 hours Agreement State licensees).

7. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation there from to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

Submit, by September 8, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2008–0368. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2008–0368. Mail comments to NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 30th day of June 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–15569 Filed 7–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

South Carolina Electric and Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper); Notice of Receipt and Availability of Application for a Combined License

On March 27, 2008, South Carolina Electric and Gas Company (SCE&G) acting as itself and agent for the South Carolina Public Service Authority also known as Santee Cooper filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' an application for a combined license (COL) for two AP1000 nuclear power plants at the existing Virgil C. Summer Nuclear Site (VCSNS) located in Fairfield County, South Carolina. The reactors are to be identified as VCSNS Units 2 and 3.

An applicant may seek a COL in accordance with Subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. The applicant also requested exemptions from certain requirements of Section IV.A.2. Appendix D to 10 CFR part 52 and 10 CFR 52.79(a)(44) as documented in part 7 of the application.

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room

(PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the cover letter of the application is ML081300460. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.*

Dated at Rockville, Maryland, this 23rd day of June 2008.

For the Nuclear Regulatory Commission.

Brian Hughes,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–15543 Filed 7–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance, Availability of Draft Regulatory Guide DG–1183.

FOR FURTHER INFORMATION CONTACT: Tania Martinez-Navedo, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6561; e-mail *Tania.Martinez-Navedo@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, ''Sizing of Large Lead-Acid Storage Batteries,'' is temporarily identified by its task number, DG–1183, which should be mentioned in all related correspondence. This guide describes methods that the staff considers acceptable for use in complying with requirements and regulations with regard to satisfying criteria for the sizing of large lead-acid storage batteries for use in nuclear power plants. Specifically, the method described in this regulatory guide relates to requirements set forth in Title 10, Section 50.55a, ''Codes and Standards,'' of the *Code of Federal Regulations* (10 CFR 50.55a) (as amended by the **Federal Register** notice of April 13, 1999; 64 FR 17944) and General Design Criteria (GDC) 1 and 17, as set forth in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.''

II. Further Information

The NRC staff is soliciting comments on DG–1183. Comments may be accompanied by relevant information or supporting data, and should mention DG–1183 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: NRCREP@nrc.gov.*

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1183 may be directed to the NRC Senior Program Manager, Tania Martinez-Navedo at (301) 415–6561 or by e-mail to *Tania.Martinez-Navedo@nrc.gov.*

Comments would be most helpful if received by September 5, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before September 5, 2008. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1183 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080650493.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 2nd day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15565 Filed 7–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 10.3, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series

was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 10.3, ''Guide for the Preparation of Applications for Special Nuclear Material Licenses for Less than Critical Mass Quantities,'' was issued with a temporary identification as Draft Regulatory Guide DG–0014. This guide directs the reader to the type of information needed by the NRC staff to evaluate an application for a specific license for the receipt, possession, use, and transfer of special nuclear material (SNM) in less than ''critical mass'' quantities. As defined in Title 10, part 70, ''Domestic Licensing of Special Nuclear Material,'' of the *Code of Federal Regulations* (10 CFR part 70), SNM is defined as: (1) any isotope of plutonium, uranium 233 (U–233), uranium-235 (U–235), uranium enriched in the isotopes U–233 or U–235; or (2) any material artificially enriched by any of the foregoing; and any other material which the Commission determines to be special nuclear material, but does not include source material.

This regulatory guide endorses the methods and procedures contained in the current revision of NUREG–1556, Volume 17, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Special Nuclear Material of Less than Critical Mass Licenses,'' as a process that the NRC staff finds acceptable for meeting the regulatory requirements.

II. Further Information

In January 2008, DG–0014 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 18, 2008. Electronic copies of Regulatory Guide 10.3, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 1st day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–15544 Filed 7–8–08; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Revised Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Revised Notice of Public Meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice was given that a public meeting of the Presidio Trust Board of Directors would be held commencing 6:30 p.m. on Monday, July 14, 2008, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The location of the public meeting has changed. A public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Monday, July 14, 2008, at the Presidio Herbst International Exhibition Hall, 385 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The agenda for the meeting has been expanded. The purposes of this meeting are to approve budgets for four projects, to adopt a revised budget for Fiscal Year 2008, to receive public comment on the draft Supplemental Environmental Impact Statement for the Main Post, to provide an Executive Director's report, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy.

Time: The meeting will begin at 6:30 p.m. on Monday, July 14, 2008.

ADDRESSES: The meeting will be held at the Presidio Herbst International Exhibition Hall, 385 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: July 2, 2008.

Karen A. Cook,

General Counsel.

[FR Doc. E8–15582 Filed 7–8–08; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28328; File No. 812–13401]

The Penn Mutual Life Insurance Company, et al.; Notice of Application

July 2, 2008.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (''1940 Act''), approving certain substitutions of securities and for an order of exemption pursuant to Section 17(b) of the 1940 Act.

APPLICANTS: The Penn Mutual Life Insurance Company (''Penn Mutual''), The Penn Insurance and Annuity Company (''PIA''), Penn Mutual Variable Annuity Account III (''Variable Annuity Account III''), Penn Mutual Variable Life Account I (''Variable Life Account I''), and PIA Variable Annuity Account I (''Variable Annuity Account I'') (Variable Annuity Account III, Variable Life Account I, and Variable Annuity Account I are collectively referred to as the ''Separate Accounts'' and, collectively with Penn Mutual and PIA, the ''Section 26 Applicants''), Penn Series Funds, Inc. (''Penn Series'' and collectively with the Section 26 Applicants, the ''Section 17 Applicants'').

SUMMARY OF APPLICATION: The Section 26 Applicants request an order pursuant to Section 26(c) of the 1940 Act, approving the proposed substitution of certain shares of diversified portfolios of Penn Series, a registered investment company that is an affiliate of the Section 26 Applicants, for shares of other investment portfolios of underlying registered investment companies unaffiliated with the Section 26 Applicants (the ''Substitutions''). The registered investment companies support variable annuity and variable life insurance contracts issued by Penn Mutual and its subsidiary, PIA. The Section 17 Applicants also request an order pursuant to Section 17(b) of the 1940 Act exempting them, to the extent necessary, from Section 17(a) of the

1940 Act for the in-kind purchases and sales of shares of the Replacement Funds (as defined herein) in connection with the Substitutions.

FILING DATE: The application was filed on June 29, 2007, and amended on July 2, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 24, 2008, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004, Attn: Michael Berenson, Esq.

FOR FURTHER INFORMATION CONTACT: Sonny Oh, Staff Attorney, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. Penn Mutual is a mutual life insurance company organized in the Commonwealth of Pennsylvania and originally chartered in 1847. Penn Mutual is a diversified financial services company providing life insurance, annuities, disability income insurance, long-term care insurance, structured settlements, retirement and other products to individual and institutional customers.

2. Penn Mutual established Variable Annuity Account III on April 13, 1982. Variable Annuity Account III is registered under the 1940 Act as a unit investment trust and is used to fund variable annuity contracts issued by Penn Mutual. Ten variable annuity contracts funded by Variable Annuity Account III are affected by the application.

3. Penn Mutual established Variable Life Account I on January 27, 1987. Variable Life Account I is registered under the 1940 Act as a unit investment trust and is used to fund variable life insurance contracts issued by Penn Mutual. Eight variable life insurance contracts funded by Variable Life Account I are affected by the application.

4. PIA is a Delaware stock life insurance company. It is a wholly-owned subsidiary of Penn Mutual. PIA established Variable Annuity Account I on July 13, 1994. Variable Annuity Account I is registered under the 1940 Act as a unit investment trust and is used to fund variable annuity contracts issued by PIA. One variable annuity contract funded by Variable Annuity Account I is affected by the application.

5. Penn Series is registered under the 1940 Act as an open-end management investment company that offers shares of diversified portfolios (each, a ''Fund,'' and collectively, the ''Funds'') for variable annuity and variable life insurance contracts (each, a ''Contract,'' and collectively, the ''Contracts'') issued by Penn Mutual and its subsidiary, PIA. Each of Penn Series'' twenty-nine separate Funds is a no-load mutual fund. Shares of each Fund may be purchased only by insurance companies for the purpose of funding variable annuity contracts and variable life insurance policies and by qualified pension plans. Penn Series was established as a Maryland corporation pursuant to Articles of Incorporation dated April 21, 1982. Independence Capital Management, Inc. (''ICMI''), a wholly-owned subsidiary of Penn Mutual, is a registered investment adviser under the Investment Advisers Act of 1940, as amended, and provides investment management services to each of the Funds. ICMI performs the day-to-day investment management services for nine of the Funds while the other twenty have sub-advisers. Penn Series and ICMI have ''manager of managers'' exemptive relief which permits one or more of the sub-advisers to be replaced without a vote of contract owners (the ''Contract Owners'').[1] Penn Mutual provides administrative and corporate services to Penn Series pursuant to an Administrative and Corporate Services Agreement and receives a fee from Penn Series for those services.

[1] Investment Company Act Release Nos. 24376 (Notice) and 24428 (Order) (April 4, 2000 and April 28, 2000, respectively) File No. 812–11896.

6. Purchase payments under the Contracts may be allocated to one or more sub-accounts of the Separate Accounts (the ''Sub-Accounts''). Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Penn Mutual or PIA, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Penn Mutual or PIA, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Penn Mutual or PIA. Accordingly, all of the assets of Penn Mutual and PIA are available to meet their respective obligations under the Contracts.

7. Each of the Contracts permits allocations of accumulation value to available Sub-Accounts that invest in specific investment portfolios of underlying registered investment companies (the ''Mutual Funds''). The Section 26 Applicants note that after the Substitutions, all of the Mutual Funds available under the Contracts will be Funds of Penn Series. Among the currently available Mutual Funds are portfolios of Neuberger Berman Advisers Management Trust, Fidelity Investments' Variable Insurance Products Fund, Fidelity Investments' Variable Insurance Products Fund V, Van Kampen's The Universal Institutional Funds, Inc., and Penn Series. All of these companies are registered under the 1940 Act as open-end management investment companies.

8. Each of the Contracts permits transfers of accumulation value from one Sub-Account to another Sub-Account at any time subject to certain restrictions. No sales charge applies to such a transfer of accumulation value among Sub-Accounts. Pursuant to the approval of the Commission and the insurance department of the Commonwealth of Pennsylvania, each of the Contracts reserves the right, upon notice to Contract Owners, to substitute shares of another mutual fund for shares of a Mutual Fund held by a Sub-Account.

9. The Section 26 Applicants propose the Substitutions to increase the level of fund management responsiveness compared to the current structure, which includes three unaffiliated investment company complexes. Currently, the Separate Accounts invest

in unaffiliated investment companies and changes due to investment performance, style drift, or management practice issues require substantial systems, filing, and printing resources, which slows the process to make changes, if necessary. Assuming Contract Owner approval, as discussed below, and because Penn Series and ICMI have ''manager of managers'' exemptive relief, the Section 26 Applicants assert that ICMI, as investment adviser, will be able to act more quickly and efficiently to protect Contract Owners' interests if the investment strategy, management team or performance of one or more of the sub-advisers does not meet expectations. The Replaced Funds (as defined herein) do not have such relief. In this regard, the Section 26 Applicants agree not to change the corresponding Replacement Fund's sub-adviser (with the exception of the Balanced Fund, which does not have a sub-adviser) without first obtaining Contract Owner approval at a meeting whose record date is after the Substitution is effective, of either (a) the sub-adviser change or (b) the ability of Penn Series and ICMI to rely on the manager-of-managers relief associated with the Replacement Fund.

10. The Replaced Funds involved in the Substitutions include five separate portfolios representing three investment company complexes. Currently there are 21 Mutual Funds offered under each Contract, and after the Substitutions, there will be 29 Mutual Funds offered under each Contract, all of which will be portfolios of Penn Series.[2] The investment objective and policies of each Replacement Fund will be the same as or substantially similar to the investment objective and policies of the corresponding Replaced Fund. Another benefit of the Substitutions is that relieving the Separate Accounts of the administrative burdens of interfacing with three unaffiliated investment company complexes is expected to simplify compliance, accounting and auditing and, generally, to allow Penn Mutual to administer the Contracts more efficiently.

11. The Substitutions will consist of the proposed substitutions of shares of the following Removed Portfolios with shares of the corresponding Replacement Portfolios:

(1) Shares of the Fidelity Investments' Variable Insurance Products Fund Equity-Income Portfolio will be replaced with shares of the Penn Series Large Core Value Fund, which has the substantially similar investment objective of total return by investing at least 80% of its net assets in securities of large capitalization companies.

(2) Shares of the Fidelity Investments' Variable Insurance Products Fund Growth Portfolio will be replaced with shares of the Penn Series Large Core Growth Fund, which has a substantially similar investment objective of capital appreciation by investing in common and preferred stocks of large capitalization U.S. companies.

(3) Shares of the Fidelity Investments' Variable Insurance Products Fund V Asset Manager Portfolio will be replaced with shares of the Penn Series Balanced Fund, which has the substantially similar investment objective of seeking long term growth and current income by utilizing a ''fund of funds'' strategy.

(4) Shares of the Neuberger Berman Advisers Management Trust Balanced Portfolio will be replaced with shares of the Penn Series Balanced Fund, which has the substantially similar investment objective of seeking long term growth and current income by utilizing a ''fund of funds'' strategy.

(5) Shares of Van Kampen's The Universal Institutional Funds, Inc. Emerging Markets Equity Portfolio will be replaced with shares of the Penn Series Emerging Markets Equity Fund, which has the same investment objective of capital appreciation by investing primarily in equity securities of issuers in emerging market countries.

12. For each Replaced Fund and each Replacement Fund, the investment objective, principal risks, investment adviser, sub-adviser (if applicable), fee structure, expenses for the fiscal year ending December 31, 2007 and assets as of December 31, 2007 are shown in the tables that follow:

SUBSTITUTION 1

	Replaced fund	Replacement fund
Fund Name	Variable Insurance Products Fund Equity-Income Portfolio	Penn Series Large Core Value Fund
Investment Objective	Seeks reasonable income. The Fund will also consider the potential for capital appreciation. The fund's goal is to achieve a yield which exceeds the composite yield on the securities comprising the Standard & Poor's 500SM Index (S&P 500®). Normally invests at least 80% of its assets in equity securities. Normally invests primarily in income-producing equity securities, which tends to lead to investments in large cap ''value'' stocks. Potentially invests in other types of equity securities and debt securities, including lower-quality debt securities. Invests in domestic and foreign issuers. Uses fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.	Seeks total return. The Fund invests primarily in value stocks of large capitalization companies. Under normal conditions, the Fund invests at least 80% of its net assets in securities of large capitalization companies. For this Fund, large capitalization companies are those companies having market capitalizations equal to or greater than the median capitalization of companies included in the Russell 1000 Value Index. The Fund primarily invests in dividend-paying stocks. The Fund may also invest in fixed income securities, such as convertible debt securities, of any credit quality (including securities rated below investment grade), real estate investment trusts and non-income producing stocks.
Principal Risks	• Stock Market Volatility • Interest Rate Changes • Foreign Exposure • Issuer-Specific Changes • ''Value'' Investing	• Stock Market Volatility • Interest Rate Changes • ''Value'' Investing • Foreign Exposure

[2] Contemporaneous with the proposed Substitutions, 9 new Mutual Funds will be available under each Contract.

SUBSTITUTION 1—Continued

	Replaced fund	Replacement fund
Significant Principal Risk Disparities	None	
Adviser/Sub-adviser	Fidelity Management & Research Company	ICMI/Eaton Vance Management
Total Fund Asset Level as of 12/31/07.	$10,948,929,549	N/A
Total Amount of Replaced Fund Assets held by all Contract Owners.	$194,949,289	N/A
Mgmt. Fee	0.46%	0.46%
Mgmt. Fee Schedule	0.46%	0.46%
12b–1 Fee	N/A	N/A
Other Expenses	0.09%	0.27%
Total Annual Operating Expenses	0.55%	0.73%
Fee Reduction	0.01%	0.19%
Net Total Annual Expenses	0.54%	0.54%

SUBSTITUTION 2

	Replaced fund	Replacement fund
Fund Name	Variable Insurance Products Fund Growth Portfolio	Penn Series Large Core Growth Fund
Investment Objective	Seeks to achieve capital appreciation. Normally investing primarily in common stocks. Invests in companies that the Adviser believes have above-average growth potential (stocks of these companies are often called ''growth'' stocks). Invests in domestic and foreign issuers. Uses fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.	Seeks to achieve long-term capital appreciation. Invests primarily in common and preferred stocks of large capitalization U.S. companies. Under normal conditions, the Fund invests at least 80% of its net assets in securities of large capitalization companies. For this Fund, large capitalization companies are those with market capitalizations within the range of companies comprising the Russell 1000 Growth Index at the time of purchase. The Fund invests principally in equity securities of large capitalization companies that offer the potential for capital growth, with an emphasis on identifying companies that have the prospect for improving sales and earnings growth rates, enjoy a competitive advantage and have effective management with a history of making investments that are in the best interests of shareholders.
Principal Risks	• Stock Market Volatility • Foreign Exposure • Issuer-Specific Changes • ''Growth'' Investing	• Stock Market Volatility • Foreign Exposure • ''Growth'' Investing
Significant Principal Risk Disparities	None	
Adviser/Sub-adviser	Fidelity Management & Research Company	ICMI/Wells Capital Management Incorporated
Total Fund Asset Level as of 12/31/07.	$8,032,463,930	N/A
Total Amount of Replaced Fund Assets held by all Contract Owners.	$211,463,358	N/A
Mgmt. Fee	0.56%	0.56%
Mgmt. Fee Schedule	0.56%	0.56%
12b–1 Fee	N/A	N/A
Other Expenses	0.09%	0.27%
Total Annual Operating Expenses	0.65%	0.83%
Fee Reduction	0.01%	0.19%
Net Total Annual Expenses	0.64%	0.64%

SUBSTITUTION 3

	Replaced fund	Replacement fund
Fund Name	Variable Insurance Products Fund V Asset Manager Portfolio	Penn Series Balanced Fund

SUBSTITUTION 3—Continued

	Replaced fund	Replacement fund
Investment Objective	Seeks to obtain high total return with reduced risk over the long term by allocating its assets among stocks, bonds, and short-term instruments. Allocates the fund's assets among stocks, bonds, and short-term and money market instruments. Maintains a neutral mix over time of 50% of assets in stocks, 40% of assets in bonds, and 10% of assets in short-term and money market instruments. Adjusts allocation among asset classes gradually within the following ranges: stock class (30%–70%), bond class (20%–60%), and short-term/money market class (0%–50%). Invests in domestic and foreign issuers. Analyzes an issuer using fundamental and/or quantitative factors and evaluating each security's current price relative to estimated long-term value to select investments.	Seeks long-term growth and current income using a "fund-of-funds" strategy. The Fund invests in a combination of other Penn Series Funds (each, an "underlying fund" and, together, the "underlying funds") in accordance with its target asset allocation. These underlying funds invest their assets directly in equity, fixed income, money market and other securities in accordance with their own investment objectives and policies. The underlying funds are managed using both indexed and active management strategies. The Fund intends to invest primarily in a combination of underlying funds; however, the Fund may invest directly in equity and fixed income securities and cash equivalents, including money market securities. Under normal circumstances, the Fund will invest 50%–70% of its assets in stock and other equity underlying funds, 30%–50% of its assets in bond and other fixed income funds, and 0%–20% of its assets in money market funds. The Fund's allocation strategy is designed to provide a mix of the growth opportunities of stock investing with the income opportunities of bonds and other fixed income securities. The Fund's underlying equity fund allocation will primarily track the performance of the large capitalization company portion of the U.S. stock market. The Fund's underlying fixed income fund allocation will be invested primarily in a broad range of investment grade fixed income securities (although up to 10% of the underlying fund may be invested in non-investment grade securities), and is intended to provide results consistent with the broad U.S. fixed income market.
Principal Risks	• Stock Market Volatility • Interest Rate Changes • Foreign Exposure • Prepayment	• Stock Market Volatility • Asset Allocation • Interest Rate Changes • Underlying Funds
Significant Principal Risk Disparities	Penn Series Balanced Fund utilizes a fund-of-funds investment strategy. Accordingly, the Fund is subject to the risks of the underlying funds (Penn Series Index 500 Fund, Penn Series Quality Bond Fund and Penn Series Money Market Fund). These risks include those associated with both equity and fixed income investing (e.g. stock market volatility and interest rate changes) that are similar to those of the Replaced Fund. The Fund is also subject to asset allocation risk, which is the risk that the selection of underlying funds and the amount of assets allocated to the selected underlying funds will cause the Fund to underperform other funds with a similar investment objective.	
Adviser	Fidelity Management & Research Company	ICMI
Total Fund Asset Level as of 12/31/07.	$1,911,400,918	N/A
Total Amount of Replaced Fund Assets held by all Contract Owners.	$31,940,165	N/A
Mgmt. Fee	0.51%	0.00%
Mgmt. Fee Schedule	0.51%	0.00%
12b–1 Fee	N/A	N/A
Acquired Fund Fees and Expenses	N/A	0.45%
Other Expenses	0.12%	0.22%
Total Annual Operating Expenses	0.63%	0.67%
Fee Reduction	0.00%	0.05%
Net Total Annual Expenses	0.63%	0.62%

SUBSTITUTION 4

	Replaced fund	Replacement fund
Fund Name	Neuberger Berman Advisers Management Trust Balanced Portfolio	Penn Series Balanced Fund

SUBSTITUTION 4—Continued

	Replaced fund	Replacement fund
Investment Objective	The Fund seeks growth of capital and reasonable current income without undue risk to principal. To pursue these goals, the Fund allocates its assets between stocks—primarily those of mid-capitalization companies, which it defines as those with a total market capitalization within the market capitalization range of the Russell Midcap Index—and in investment grade bonds and other debt securities from U.S. government and corporate issuers. The Portfolio Managers normally allocates anywhere from 50% to 70% of its net assets to stock investments, with the balance allocated to debt securities (at least 25%) and operating cash.	Seeks long-term growth and current income by using a ''fund-of-funds'' strategy. The Fund invests in a combination of other Penn Series Funds (each, an ''underlying fund'' and, together, the ''underlying funds'') in accordance with its target asset allocation. These underlying funds invest their assets directly in equity, fixed income, money market and other securities in accordance with their own investment objectives and policies. The underlying funds are managed using both indexed and active management strategies. The Fund intends to invest primarily in a combination of underlying funds; however, the Fund may invest directly in equity and fixed income securities and cash equivalents, including money market securities. Under normal circumstances, the Fund will invest 50%–70% of its assets in stock and other equity underlying funds, 30%–50% of its assets in bond and other fixed income funds, and 0%–20% of its assets in money market funds. The Fund's allocation strategy is designed to provide a mix of the growth opportunities of stock investing with the income opportunities of bonds and other fixed income securities. The Fund's underlying equity fund allocation will primarily track the performance of the large capitalization company portion of the U.S. stock market. The Fund's underlying fixed income fund allocation will be invested primarily in a broad range of investment grade fixed income securities (although up to 10% of the underlying fund may be invested in non-investment grade securities), and is intended to provide results consistent with the broad U.S. fixed income market.
Principal Risks	• Stock and Bond Market Volatility • Interest Rate Changes • Mid-Capitalization Company Risk	• Stock Market Volatility • Asset Allocation • Interest Rate Changes • Underlying Funds
Significant Principal Risk Disparities	Penn Series Balanced Fund utilizes a fund-of-funds investment strategy. Accordingly, the Fund is subject to the risks of the underlying funds (Penn Series Index 500 Fund, Penn Series Quality Bond Fund and Penn Series Money Market Fund). These risks include those associated with both equity and fixed income investing (e.g., stock market volatility and interest rate changes) that are similar to those of the Replaced Fund. The Fund is also subject to asset allocation risk, which is the risk that the selection of underlying funds and the amount of assets allocated to the selected underlying funds will cause the Fund to underperform other funds with a similar investment objective.	
Adviser/Subadviser	Neuberger Berman Management Inc./Neuberger Berman, LLC	ICMI
Total Fund Asset Level as of 12/31/07.	$78,363,158	N/A
Total Amount of Replaced Fund Assets Held by all Contract Owners.	$49,790,470	N/A
Mgmt. Fee	0.85% (includes both investment advisory and administrative services)	0.00%
Mgmt. Fee Schedule	First $250 million 0.55% From $250 million to $500 million 0.525% From $500 to $750 million 0.50% From $750 million to $1 billion 0.475% From $1 billion to $1.5 billion 0.45% From $1.5 billion to $4 billion 0.425% More than $4 billion 0.40%	0.00%
12b–1 Fee	N/A	N/A
Acquired Fund Fees and Expenses	N/A	0.45%
Other Expenses	0.32%	0.22%
Total Annual Operating Expenses	1.17%	0.67%
Fee Reduction	—	0.05%
Net Total Annual Expenses	1.17%	0.62%

SUBSTITUTION 5

	Replaced fund	Replacement fund
Fund Name	The Universal Institutional Funds, Inc. Emerging Markets Equity Portfolio	Penn Series Emerging Markets Equity Fund
Investment Objective	Seeks long-term capital appreciation by investing primarily in growth-oriented equity securities of issuers in emerging market countries. Seeks to maximize returns by investing in growth-oriented equity securities in emerging markets. Combines top-down country allocation with bottom-up stock selection. Investment selection criteria include attractive growth characteristics, reasonable valuations and company managements with strong shareholder value orientation. Invests at least 80% of the Portfolio's assets in equity securities located in emerging market countries.	Seeks to achieve capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be invested in equity securities located in emerging market countries. For this Fund, an issuer is considered to be located in an emerging market country if, at the time of investment: (i) Its principal securities trading market is in an emerging market country, (ii) alone or on a consolidated basis it derives 50% or more of its annual revenue from goods produced, sales made or services performed in emerging market countries, or (iii) it is organized under the laws of, or has a principal office in, an emerging market country. The Fund invests primarily in equity securities, including common and preferred stocks, convertible securities, rights and warrants to purchase common stock, and depositary receipts.
Principal Risks	• Stock Market Volatility • Foreign Exposure • Emerging Markets	• Stock Market Volatility • Foreign Exposure • Emerging Markets • Small Cap • Currency
Significant Principal Risk Disparities	Small cap companies may be more vulnerable to adverse business or economic events than larger, more established companies. Investing in currency involves the risk that currencies will decline in value relative to the U.S. dollar, or in the case of hedging positions, that the U.S. dollar will decline in value relative to the currency hedged.	
Adviser/Subadviser	Morgan Stanley Investment Management Inc./Morgan Stanley Investment Management Company	ICMI/Van Kampen Asset Management
Total Fund Asset Level as of 12/31/07.	$1,673,500,000	N/A
Total Amount of Replaced Fund Assets Held by all Contract Owners.	$135,575,219	N/A
Mgmt. Fee	1.21%	1.18%
Mgmt. Fee Schedule	First $500 million 1.25% From $500 million to $1 billion 1.20% From $1 billion to $2.5 billion 1.15% More than $2.5 billion 1.00%	1.18%
12b–1 Fee	N/A	N/A
Other Expenses	0.37%	0.40%
Acquired Fund Fees and Expenses	0.02%	0.02%
Total Annual Operating Expenses	1.60%	1.60%
Fee Reduction	0.00%	0.00%
Net Total Annual Expenses	1.60%	1.60%

13. The Section 26 Applicants represent that the Substitutions will take place at the Replaced Funds' relative net asset values determined on the date of the Substitutions in accordance with Section 22 of the 1940 Act and Rule 22c-1 thereunder with no change in the total value of amounts held under a Contract for a Contract Owner in all Sub-Accounts of the Separate Account (the ''Account Value'') or death benefit or in the dollar value of his or her investment in any of the Sub-Accounts. Accordingly, there will be no financial impact on any Contract Owner. The Substitutions will generally be effected by having each of the Sub-Accounts that invests in the Replaced Funds redeem its shares at the net asset value calculated on the date of the Substitutions and purchase shares of the respective Replacement Funds at the net asset value calculated on the same date.

14. Alternatively, a Replaced Fund may redeem the interest ''in-kind,'' for example, if it determines that a cash redemption might adversely affect its shareholders. In that case, the Substitutions will be effected by the Sub-Account contributing all the securities it receives from the Replaced Fund for an amount of Replacement Fund shares equal to the fair market value of the securities contributed. All in-kind redemptions from a Replaced Fund of which any of the Section 26 Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc.* (available December 28, 1999). In-kind purchases of shares of a Replacement Fund will be conducted as described in Section VI of the application.

15. The Section 26 Applicants state that the Substitutions will be described in a supplement to the prospectuses for the Contracts (''Supplements'') filed with the Commission and mailed to Contract Owners. The Supplements will provide Contract Owners with notice of the Substitutions and describe the reasons for engaging in the Substitutions. The Supplements will also inform Contract Owners with assets allocated to a Sub-Account investing in the Replaced Funds that no additional amount may be invested in the Replaced

Funds on or after the date of the Substitutions. In addition, the Supplements will inform affected Contract Owners that they will have the opportunity to reallocate Account Value once (as described below):

- Prior to the Substitutions, from each Sub-Account investing in a Replaced Fund, and
- for 30 days after the Substitutions, from each Sub-Account investing in a Replacement Fund to Sub-Accounts investing in other Mutual Funds available under the respective Contracts, without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitations, other than any applicable limitations in place to deter potentially harmful excessive trading or limitations on the number of transfers to or from the fixed accounts available with the variable annuity contracts. To the extent a Contract Owner has Account Value allocated to more than one Sub-Account investing in a Replaced Fund, the Contract Owner will be permitted one reallocation from each Sub-Account. If a Contract Owner reallocates on the same day from all affected Sub-Accounts to which the Contract Owner has Account Value allocated, they will have exhausted the number of permitted reallocations.

16. Within five days after a Substitution, Penn Mutual and PIA will send their affected Contract Owners written confirmation that a Substitution has occurred. The prospectuses for the Contracts, as revised by the Supplements, will reflect the Substitutions. Each Contract Owner will be provided with a prospectus for the Replacement Funds before the Substitutions.

17. Penn Mutual and PIA assert that they will pay all expenses and transaction costs of the Substitutions, including all legal, accounting and brokerage expenses relating to the Substitutions. No costs will be borne by Contract Owners. Affected Contract Owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the Section 26 Applicants under the Contracts be altered in any way. The Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract Owners to be greater after the Substitutions than before the Substitutions. The Substitutions will have no adverse tax consequences on Contract Owners and will in no way alter the tax benefits to Contract Owners. Further, the Substitutions will in no way alter any of the life insurance or annuity benefits available to Contract Owners under the Contracts.

18. The Section 26 Applicants believe that their request satisfies the standards for relief pursuant to Section 26(c) of the 1940 Act, as set forth below, because the affected Contract Owners will have:

(1) Account Value allocated to a Sub-Account invested in a Replacement Fund with an investment objective and policies that are the same or substantially similar to the investment objective and policies of the Replaced Fund; and

(2) Replacement Funds whose current total annual expenses are equal to or lower than those of the Replaced Funds for their 2007 fiscal year. In addition, the Section 26 Applicants represent that with respect to Contract Owners on the date of the proposed Substitutions, Penn Mutual and PIA, as applicable, will reimburse, on the last business day of each fiscal quarter during the two years following the date of the proposed Substitutions, the Sub-Accounts investing in the applicable Replacement Fund such that the sum of the Replacements Fund's net operating expense ratio (taking into account any expense waivers or reimbursements) and Sub-Account expense ratio (asset-based fees and charges deducted on a daily basis from Sub-Account assets and reflected in the calculation of Sub-Account unit value) for such period will not exceed, on an annualized basis, the sum of the corresponding Replaced Fund's net operating expense ratio (taking into account any expense waivers or reimbursements) and Sub-Account expense ratio for fiscal year 2007.

Applicants' Legal Analysis

15. Section 26(c) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Section 26 Applicants assert that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. The Section 26 Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

3. The Section 26 Applicants argue that substitutions have been common where the substituted fund has investment objectives and policies that are similar to those of the eliminated fund, and current expenses that are similar to or lower than those of the eliminated fund. The Section 26 Applicants note that in all cases, the investment objectives and policies of the Replacement Funds are sufficiently similar to those of the corresponding Replaced Funds that affected Contract Owners will have reasonable continuity in investment expectations. Accordingly, the Section 26 Applicants conclude that the Replacement Funds are appropriate investment vehicles for those affected Contract Owners who have Account Value allocated to the Replaced Funds.

4. The Section 26 Applicants argue that because of the foregoing representations and conditions, the Substitutions will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and are consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

5. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered company.

6. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Accordingly, the Section 17 Applicants are seeking relief, to the extent necessary, from Section 17(a) for the in-kind purchases and sales of Replacement Fund Shares.

8. The Section 17 Applicants submit that the terms of the proposed in-kind purchases of shares of the Replacement Funds by the Separate Accounts,

including the consideration to be paid and received, as described in this Application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also submit that the proposed in-kind purchases by the Separate Accounts are consistent with the policies of Penn Mutual and PIA and the individual Replacement Funds. Finally, the Section 17 Applicants submit that the proposed Substitutions are consistent with the general purposes of the 1940 Act.

9. To the extent that the Separate Accounts' in-kind purchases of Replacement Fund shares are deemed to involve principal transactions between entities which are affiliates of affiliates, the Section 17 Applicants maintain that the terms of the proposed in-kind purchase transactions, including the consideration to be paid and received by each Replacement Fund involved, are reasonable, fair and do not involve overreaching. In addition, although not applicable, the Section 17 Applicants represent that the in-kind transactions will conform with all of the conditions enumerated in Rule 17a–7, except that the consideration paid for the securities being purchased or sold may not be entirely cash.

10. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Contract Owner's Account Value or death benefit or in the dollar value of his or her investment in any Sub-Account. Contract Owners will not suffer any adverse tax consequences as a result of the Substitutions. The fees and charges under the Contracts will not increase because of the Substitutions.

11. Even though they may not rely on Rule 17a–7, the Section 17 Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching. Nevertheless, the circumstances surrounding the proposed Substitutions will be such as to offer the same degree of protection to each Replacement Fund from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, Penn Mutual and PIA (or any of their affiliates) cannot effect the proposed transactions at a price that is disadvantageous to any of the Replacement Funds. Moreover, although the transactions may not be entirely for cash, the Section 17 Applicants assert that each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Replacement Fund involved valued in accordance with the procedures disclosed in its registration statement and as required by Rule 22c–1 under the 1940 Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions.

12. The Section 17 Applicants also argue that the sale of shares of Replacement Funds for investment securities, as contemplated by the proposed in-kind transactions, is consistent with the investment policy and restrictions of the Replacement Funds because (1) the shares are sold at their net asset value, and (2) the portfolio securities are of the type and quality that the Replacement Funds would each have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, the adviser or sub-adviser, as applicable of a Replacement Fund will undertake to examine the portfolio securities being offered to each Replacement Fund and accept only those securities as consideration for shares that it would have acquired for each such fund in a cash transaction.

13. The Section 17 Applicants also assert that the proposed in-kind transactions are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act and do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion:

For the reasons set forth in the application, the Applicants each respectfully request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and an order of exemption pursuant to Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15514 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on July 10, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for July 10, 2008 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Amicus consideration; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: July 2, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15480 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8941; 34–58097; File No. 4–560]

Roundtable on Fair Value Accounting Standards

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On July 9, 2008, the Securities and Exchange Commission will hold a roundtable to facilitate an open discussion of the benefits and potential challenges associated with existing fair value accounting and auditing standards. The roundtable will be organized as two panels: The first panel to discuss fair value accounting issues from the perspective of larger financial institutions and the needs of their investors; and the second panel to discuss the issues from the perspective of all public companies, including small public companies, and the needs of their investors. The panels will include investors, preparers, auditors, regulators and other interested parties. Additionally, representatives from the Financial Accounting Standards Board, International Accounting Standards Board and Public Company Accounting Oversight Board will be present as observers.

The roundtable will be held in the auditorium at the SEC's headquarters at 100 F Street, NE., Washington, DC. The roundtable will be open to the public with seating on a first-come, first-served basis. The roundtable discussions also will be available via webcast on the SEC's Web site at *http://www.sec.gov*. The roundtable agenda and other materials related to the roundtable, including a list of participants and moderators, will be accessible at *http://www.sec.gov/spotlight/fairvalue.htm*. The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable.

DATES: Comments should be received on or before July 23, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–560 on the subject line.

Paper Comments

• Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 4–560. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission staff will post all comments on the Commission's Internet Web site (*http://www.sec.gov/comments/4–560/4–560.shtml*). Comments also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James L. Kroeker, Deputy Chief Accountant, or Rachel Mincin, Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6561.

SUPPLEMENTARY INFORMATION: The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable. The panel discussions will focus on:

- The usefulness of fair value accounting to investors
- Potential market behavior effects from fair value accounting
- Practical experience and potential challenges in applying fair value accounting standards
- Aspects of the current standards, if any, that can be improved
- Experience with auditors providing assurance regarding fair value accounting.

By the Commission.

Dated: July 3, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15570 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58060; File No. SR–Amex–2008–49]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 107 of the Company Guide

June 30, 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 June 13, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by Amex. Amex filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. 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 make certain non-substantive housekeeping changes to various subsections of Section 107 of the Amex Company Guide (the ''Company Guide''). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.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, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make certain non-substantive changes to the rule text of Section 107 of the Company Guide. The Exchange in this proposal seeks to reduce the duplications in subsections of Sections 107D through 107I by consolidating provisions that apply to all securities listed under Section 107 of the Company Guide (the ''Section 107 Securities'').

Over the past several years, the Exchange has adopted a variety of ''generic'' listing standards applicable to Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income-Linked Securities, Futures-Linked Securities

[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).

and Combination-Linked Securities. Sections 107D, 107E, 107F, 107G, 107H and 107I of the Company Guide detail the listing requirements for Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income-Linked Securities, Futures-Linked Securities and Combination-Linked Securities, respectively. In each of these Sections, the subparagraphs (a) through (f), and (i) through (k) provide for substantively identical requirements. As a result, the Exchange proposes to delete these subparagraphs and consolidate these ''general requirements'' into proposed new Commentaries .01 and .02 to Section 107 of the Company Guide.

Proposed paragraphs (a) through (f) of proposed Commentary .01 would consolidate substantively the same information contained in subparagraphs (a) through (f) of Sections 107D through I. The criteria set forth in proposed Commentary .01 to Section 107 of the Company Guide would be applicable to Section 107 Securities as follows:

- Both the issue and the issuer of the security must meet the ''General Criteria'' in Section 107A.
- The issue have a minimum term of one (1) year but not greater than thirty (30) years.
- The issue must be non-convertible debt of the issuer.
- Payment at maturity may or may not provide for a multiple of the direct or inverse performance of the underlying reference asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of the underlying reference asset.
- The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Section 101(a) of the Company Guide. In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in Section 101(a) of the Company Guide, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.
- The issuer must be in compliance with Rule 10A–3 under the Act.

Proposed Commentary .02 relating to trading halts, firewalls, surveillance procedures and proposed paragraphs (b) through (d) of proposed Commentary .02 would consolidate paragraphs (i) through (k) of Sections 107D through I. Proposed paragraph (a) of Commentary .02 is substantively identical to the trading halt provisions found in Section 107D(h)(4) and subparagraphs (h)(3) of Sections 107E through I of the Company Guide. The proposed trading halt provision would apply to all the Section 107 Securities and would allow the Exchange to halt trading if the value of the underlying reference asset or indicative value is not being disseminated.[5] The criteria set forth in proposed Commentary .02 to Section 107 of the Company Guide would be applicable to Section 107 Securities as follows:

- Trading Halts. If the value of the underlying reference asset or indicative value is not being disseminated as required, the Exchange may halt trading during the day on which such 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.
- Firewalls. If the value of a security is based in whole or in part on an index or portfolio maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel responsible for the maintenance of such index or portfolio who have access to information concerning changes and adjustments to the index or portfolio, and the index or portfolio shall be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board or similar entity that advises an index license provider 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.
- Surveillance Procedures. The Exchange will implement written surveillance procedures for the listing and trading of securities, including adequate comprehensive surveillance sharing agreements, as applicable.
- Securities listed pursuant to Sections 107D through I of the Company Guide will be treated as equity instruments subject to the Exchange's equity trading rules, except that (i) such securities listed and traded as bond or debt securities will be subject to the rules applicable to bond or debt securities and (ii) securities redeemable at the option of the holders thereof on at least a weekly basis will be subject to the trading rules applicable to exchange-traded funds.

The Exchange represents that as set forth above, the substantive requirements in proposed Commentaries .01 and .02 to Section 107 of the Company Guide are substantively identical to the corresponding paragraphs of Sections 107D through I of the Company Guide.

The listing requirements for each of the Section 107 Securities would now refer to Commentary .01 rather than individually setting forth the ''General Criteria'' for each issue and issuer. Commentary .02 specifically provides that it applies to the listing and trading of the Section 107 Securities with respect to trading halts, firewalls, surveillance procedures and the characterization of the Section 107 Securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes that the proposal will provide better clarity and streamline its Section 107 listing requirements.

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 solicited or received with respect to the proposed rule change.

[5] Currently, Section 107D permits the Exchange to halt trading if the value of the underlying index is not being disseminated, and does not permit a trading halt if the indicative value is not being disseminated.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Commission Rule 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change would allow the proposed non-substantive revisions to streamline and clarify Section 107 of the Company Guide to be effective immediately. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.[12]

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. 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–Amex–2008–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–49. 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 Amex. 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–Amex–2008–49 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15484 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that Amex has satisfied this requirement.

[11] CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58067; File No. SR–Amex–2008–54]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Closed-End Fund of Hedge Fund Listing Requirements

June 30, 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 June 27, 2008, the American Stock Exchange LLC (''Amex'' 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt ''generic'' listing standards for closed-end management investment companies (''Closed-End Funds'') of hedge funds (''Hedge Funds''). The text of the proposed rule change is below. [Bracketing] indicates text to be deleted and *italics* indicate text to be added.

* * * * *

Section 101 of the Company Guide

(a) through (e) No Change

(f) Closed-End Management Investment Companies—(*1*)The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a ''Closed-End Fund'') that meets the following criteria: (*i*)[(1)] Size—market value of publicly held shares or net assets of at least $20,000,000; or (*ii*)[(2)] A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940 as amended (the ''Group''), is subject to the following criteria:

(*A*)[i.] The Group has a total market value of publicly held shares or net assets of at least $75,000,000;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(*B*)[ii.] The Closed-End Funds in the Group have an average market value of publicly held shares or net assets of at least $15,000,000; and

(*C*)[iii.] Each Closed-End Fund in the Group has a market value of publicly held shares or net assets of at least $10,000,000.

(*iii*)[(3)] Distribution—See Section 102(a).

(2) Closed-End Fund of ''Hedge'' Funds. A Closed-End Fund of Hedge Funds for purposes of this provision means a Closed-End Fund that invests in one or more ''Hedge Funds'' as defined in subparagraph (3) below and may include other securities and/or assets. In addition to the requirements set forth above in subparagraph (1) to Section 101(f) of the Company Guide, a Closed-End Fund of Hedge Funds is required to meet the following requirements:

(i) Net Asset Value. In order for a Closed-End Fund of Hedge Funds to be listed by the Exchange, the Closed-End Fund is required to provide for the calculation and prompt public dissemination of its net asset value (''NAV'') on at least a weekly basis.

(ii) Underlying Hedge Funds. A Closed-End Fund of Hedge Funds is permitted to invest only in underlying Hedge Funds that provide for weekly, valuation reports prepared by an unaffiliated, independent third party. The underlying Hedge Fund and the Closed-End Fund or the registered investment adviser on behalf of the Closed-End Fund must enter into a contractual relationship whereby the underlying Hedge Fund agrees to provide the weekly valuation reports to the Closed-End Fund.

(iii) Information Dissemination. A Closed-End Fund must contractually agree to publicly disseminate any material information that an underlying Hedge Fund makes available to its investors. Such material information shall be publicly disseminated at the same time such information is provided to the underlying Hedge Fund's investors.

(3) Definition of Hedge Fund. A ''Hedge'' Fund for purposes of this Section 101(f) of the Company Guide means a trust, corporation or similar entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 (the ''1940 Act'') but for the exception provided from that definition by either sections 3(c)(1) or 3(c)(7) of the 1940 Act.

* * * * *

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 proposal is to adopt specific listing criteria for Closed-End Funds [3] that substantially invest their assets in underlying ''Hedge Funds.'' A ''Hedge Fund'' for purposes of this proposal is defined in proposed Section 101(f)(3) of the Amex Company Guide (the ''Company Guide'') as a trust, corporation or similar entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 (the ''1940 Act'') but for the exception provided from that definition by either sections 3(c)(1) or 3(c)(7) of the 1940 Act.

Section 3(c)(1) of the 1940 Act exempts from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities. Section 3(c)(7) of the 1940 Act generally exempts any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Section 3(c)(7) also provides an exception to issuers if in addition to qualified purchasers, outstanding securities of that issuer are beneficially owned by not more than 100 persons who are not qualified purchasers.[4]

General Criteria for Closed-End Funds

Closed-End Fund securities that are listed on the Exchange are required to meet the requirements set forth in Section 101(f) of the Company Guide. The requirements are intended to insure that each security of a Closed-End Fund listed on the Exchange has sufficient market value and public distribution. In this manner, the Exchange believes that Closed-End Fund securities meeting these initial listing requirements are by definition suitable for auction trading.

Section 101(f) of the Company Guide provides the following criteria for the initial listing of a Closed-End Fund security:

- A market value of publicly held shares or net assets of at least $20,000,000; or
- A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the 1940 Act (the ''Group''), and subject to the following criteria:
- The Group has a total market value of publicly held shares or net assets of at least $75,000,000;
- The Closed-End Funds in the Group have an average market value of publicly held shares or net assets of at least $15,000,000; and
- Each Closed-End Fund in the Group has a market value of publicly held shares or net assets of at least $10,000,000.

and

- Minimum public distribution of 500,000 shares, together with a

[3] Section 5(a) of the Investment Company Act of 1940 defines a ''closed-end'' company as any management company other than an open-end company. An ''open-end company'' means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer. Closed-end funds generally issue a limited number of shares and are under no obligation to redeem the shares outstanding as is the case of an open-end fund. Shares of closed-end funds typically are listed and traded on a stock exchange. Accordingly, similar to stock of other publicly traded companies, share prices of closed-end funds are determined by the pressures of supply and demand rather than by the value of the underlying assets.

[4] Section 2(a)(51) of the 1940 Act defines a ''qualified purchaser'' to mean (i) any natural person who owns not less than $5 million in investments; (ii) any company that owns not less than $5 million in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons; (iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or (iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25 million in investments.

minimum of 800 public shareholders or a minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders. The Exchange may alternatively consider the listing of a Closed-End Fund's securities if the Closed-End Fund has a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the Exchange undertakes a review of the nature and frequency of such trading activity and such other factors as it may determine to be relevant in ascertaining whether such issue is suitable for auction market trading. A security which trades infrequently will not be considered for listing even though average daily volume amounts to 2,000 shares per day or more.

Under the Exchange's proposal, a Closed-End Fund of Hedge Funds would be required to meet the current initial listing standards for the securities of Closed-End Funds as set forth in Section 101(f)(1) through (3) of the Company Guide. In addition, the proposal would also add additional listing requirements for the securities of a Closed-End Fund of Hedge Funds to meet in order to be listed on the Exchange as set forth in the Section below.

The Proposal

The proposal seeks to revise Section 101(f) of the Company Guide to provide that in addition to the general listing requirements for securities of Closed-End Funds detailed above, a Closed-End Fund of Hedge Funds is required to meet the following requirements:

- The Closed-End Fund will be required to provide for the calculation and public dissemination of its net asset value (''NAV'') on at least a weekly basis.
- A Closed-End Fund of Hedge Funds will be permitted to invest only in underlying Hedge Funds that provide for weekly, valuation reports prepared by an unaffiliated, independent third party.
- Each underlying Hedge Fund and the Closed-End Fund or the registered investment adviser on behalf of the Closed-End Fund will also be required to enter into a contractual relationship whereby the underlying Hedge Fund agrees to provide the weekly valuation reports to the Closed-End Fund.
- A Closed-End Fund of Hedge Funds will be required to contractually agree to publicly disseminate any material information that an underlying Hedge Fund makes available to its investors. Such material information is required to be publicly disseminated at the same time such information is provided to the underlying Hedge Fund's investors.

In connection with these proposed requirements, the Exchange would require representations from each Closed-End Fund of Hedge Funds consisting of (i) an obligation by the Closed-End Fund of Hedge Funds to provide for the calculation and public dissemination of its NAV on at least a weekly basis, (ii) a requirement that the Closed-End Fund of Hedge Funds will invest only in underlying Hedge Funds that provide weekly, independent valuation reports prepared by unaffiliated third parties, and (iii) a commitment that the Closed-End Fund of Hedge Funds has entered into a contractual relationship with the underlying Hedge Fund whereby the Hedge Fund agrees to provide weekly valuation reports to the Closed-End Fund. In addition, the Closed-End Fund of Hedge Funds will also be required to provide a representation to the Exchange that any material information that an underlying Hedge Fund makes available to its investors will also be publicly available via a publicly available website at the same time such information is provided to the Hedge Fund's investors.

The Exchange believes that the additional listing standards for Closed-End Fund of Hedge Funds will provide alternatives to listing markets overseas as well as the traditional over-the-counter (''OTC'') markets. For example, the London Stock Exchange recently announced a $500 million public offering of the BlackRock Absolute Return Strategies Ltd which will provide investors access to BlackRock's Appreciation Strategy of investing in pools of hedge funds.[5] The Exchange notes that Goldman Sachs recently announced the introduction of a new index mutual fund that is expected to track the average return of the hedge fund universe.[6]

The Exchange submits that the instant proposal would permit the listing of the CINTRA Select Fund[7] once the Fund's registration statement is declared effective. The CINTRA Select Fund is a Closed-End Fund of Hedge Funds that seeks capital appreciation through underlying Hedge Funds that employ a variety of absolute return investment strategies.

The Exchange believes that the adoption of the proposed Closed-End Fund of Hedge Funds listing standards will attract additional interest in listing and trading Closed-End Fund of ''Hedge Funds'' on the Exchange for the benefit of investors and the marketplace. We believe an auction-market or exchange listing venue for ''hedge fund'' products should serve to strengthen the regulatory environment for these products through increased transparency and regulatory oversight.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act[8] in general and furthers the objectives of Section 6(b)(5)[9] 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 further believes that the proposal is expected to provide investors and the marketplace with additional exchange-listed investment opportunities, promoting increased transparency and regulatory oversight unavailable in the over-the-counter market.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

[5] *See* MarketWatch, ''BlackRock Launches IPO for London-listed fund,'' dated March 29, 2008.

[6] *See* Ignites.com, ''Goldman Unveils '40 Act Hedge Fund for the Masses,'' dated June 12, 2008. The Goldman Sachs Absolute Return Tracker Fund tracks the Goldman Sachs ART Index, a benchmark created in January 2007 to replicate the average return of approximately 4,000 hedge funds in the Lipper TASS hedge fund database. *See also* Securities Act File No. 33–17619 and Investment Company Act File No. 811–05349.

[7] *See* CINTRA Select Fund, Inc. Form N–2 (Securities Act File No. 333–96821 and Investment Company Act File No. 811–21165).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

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–Amex–2008–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–54. 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, 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–Amex–2008–54 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15513 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58048; File No. SR–CBOE–2008–65]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

June 27, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the ''Rule''), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (''Hybrid'') through December 31, 2008. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *(http://www.cboe.org/Legal).*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through June 30, 2008.[7] As the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has requested that the Commission waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (SR–CBOE–2005–76) (extending the duration of the Rule through December 14, 2005); 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (SR–CBOE–2005–102) (extending the Rule through March 14, 2006); 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (SR–CBOE–2006–22) (extending the duration of the Rule through July 14, 2006); 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006) (SR–CBOE–2006–60) (extending the duration of the Rule through October 31, 2006); 54680 (November 1, 2006), 71 FR 65554 (November 8,

Continued

duration period expires on June 30, 2008, the Exchange proposes to extend the effectiveness of the Rule through December 31, 2008.[8]

2. Statutory Basis

Extension of the duration of the Rule will allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act[9] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.[14]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[15] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For this reason, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

2006) (SR–CBOE–2006–86) (extending the duration of the Rule through January 31, 2007); 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007) (SR–CBOE–2007–10) (extending the duration of the Rule through April 30, 2007); 55676 (April 27, 2007), 72 FR 25348 (May 4, 2007) (SR–CBOE–2007–40)(extending the duration of the Rule through July 31, 2007); 56177 (August 1, 2007), 72 FR 44194 (August 7, 2007) (SR–CBOE–2007–89) (extending the duration of the Rule through December 31, 2007) and 57054 (December 27, 2007), 73 FR 899 (January 4, 2008)(SR–CBOE–2007–149) (extending the duration through June 30, 2008).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the duration of the Rule was extended. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006), RG06–34 (April 7, 2006), RG06–79 (July 31, 2006), RG06–115 (November 8, 2006), RG07–21 (February 8, 2007), RG07–53 (May 17, 2007), RG07–88 (August 15, 2007) and RG08–08 (January 9, 2008). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

[9] 15 U.S.C. 78a *et seq.*

[10] 15 U.S.C. 78f(b).

[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).

[14] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided notice to the Commission two business days prior to filing the proposed rule change, and the Commission has determined to waive the five business day requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–CBOE–2008–65 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15482 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58073; File No. SR–CBOE–2008–71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee

July 1, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 prepared by CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[5] is $10,868 per month and took effect on June 1, 2008. The Exchange proposes to revise the access fee to be $12,387 per month commencing on July 1, 2008.

The Exchange used the following process to set the proposed access fee: The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable CBOE membership leases and obtained the Clearing Firm Floating Monthly Rate[6] designated by each of these clearing firms for the month of July 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates.

The Exchange used the same process to set the proposed access fee that it used to set the current access fee. The only difference is that the Exchange used Clearing Firm Floating Monthly Rate information for the month of July 2008 to set the proposed access fee (instead of Clearing Firm Floating Monthly Rate information for the month of June 2008 as was used to set the current access fee) in order to take into account changes in Clearing Firm Floating Monthly Rates for the month of July 2008.

The Exchange believes that the process used to set the proposed access fee and the proposed access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 in support of that process and the original access fee for Temporary Members under Rule 3.19.02.[7]

The proposed access fee will remain in effect until such time either that the Exchange submits a further rule filing pursuant to section 19(b)(3)(A)(ii) of the Act[8] to modify the proposed access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions regarding the assessment of the current access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[6] The term ''Clearing Firm Floating Monthly Rate'' refers to the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.

[7] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original access fee for Temporary Members under Rule 3.19.02, for detail regarding the rationale in support of the original access fee and the process used to set that fee, which is also applicable to this proposed rule change as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2008–71 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15487 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58072; File No. SR–ISE–2008–51]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Exemption for Certain Regulation NMS-Compliant Intermarket Sweep Orders From the Requirements in Rule 2119 (Equity EAMs Acting as Brokers) and Conform Rule 2119 to Financial Industry Regulatory Authority Rules

July 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2008, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Rule 2119 (Equity EAMs Acting as Brokers) to conform it to similar Financial Industry Regulatory Authority, Inc. (''FINRA'') rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements 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

ISE Rule 2119 generally prohibits an Equity Electronic Access Member (''Equity EAM'') from trading for its own account in a security when the Equity EAM is either holding an unexecuted customer market order in that security or trades at a price that is equal to or better than an unexecuted customer limit order that it holds in that security. Although FINRA rules impose similar obligations, FINRA provides for exceptions and exemptions to this obligation that the Exchange now seeks to adopt.

The Exchange proposes to amend Rule 2119 to include an exception that allows an Equity EAM to trade for its own account in a security when the Equity EAM is either holding an unexecuted customer market order in that security or trades at a price that is equal to or better than an unexecuted customer limit order that it holds in that security, provided that the Equity EAM immediately thereafter executes the customer order up to the size and at the same price at which it traded for its own account or better.

The Exchange also proposes to amend Rule 2119 to add an exemption that was recently adopted by FINRA. On May 6, 2008, the Commission approved amendments to FINRA Rule 2111 and IM–2110–2 that establish an intermarket sweep order (''ISO'') exemption.[5] This exemption provides members with relief

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Release No. 57784 (May 6, 2008), 73 FR 27587 (May 13, 2008) (SR–FINRA–2007–39) (''Release No. 34–57784'').

from the obligations related to trading in their own accounts while holding an unexecuted customer order. Specifically, an exemption applies when an ISO is routed for the member's own account and a customer order is received after the member routed the ISO, but before the member receives an execution. Additionally, an exemption applies when the member executes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO.

The Exchange proposes to amend Rule 2119 to incorporate these exceptions and exemptions into its Rule to facilitate member compliance with Regulation NMS and to more closely align ISE Rules with similar FINRA rules.

2. Statutory Basis

The basis for this proposed rule change is found in Section 6(b)(5)[6] of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirement in Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for 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 believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because the Exchange's proposal comports with FINRA rules that previously were approved by the Commission.[9] In addition, such waiver would allow the Exchange to provide for, without delay, consistent application of these rules for its members that also are members of FINRA. Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2008–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2008–51 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15496 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78(f)(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] *See, e.g.*, Release No. 34–57884, *supra* note 5.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58069; File No. SR–NASDAQ–2008–054]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq Rules

June 30, 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 June 13, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Nasdaq designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make miscellaneous non-controversial changes to the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://nasdaq.complinet.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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make miscellaneous non-controversial changes to the Nasdaq rulebook. When Nasdaq separated from the National Association of Securities Dealers, Inc. (''NASD'') and began to operate as a national securities exchange in 2006, it adopted a rulebook with provisions regulating member conduct that was designed to parallel the NASD rulebook in many respects. There were three compelling reasons for this approach. First, most Nasdaq members were expected to be members of NASD that had traded on the Nasdaq while it was a facility of NASD, so these members were accustomed to the requirements of NASD rules. Second, adopting rules at variance with NASD rules would impose unnecessary regulatory burdens on Nasdaq members by requiring them to comply with a new rule set. Third, adopting parallel rules allowed Nasdaq and NASD to enter into an agreement under Rule 17d–2 under the Act[5] (the ''17d–2 Agreement'') to allocate responsibility to NASD for enforcement of common rules with respect to common members.[6]

The main purpose of this rule change is to adopt conforming changes to reflect recent changes to certain NASD rules that impact corresponding Nasdaq rules, and to make other related changes to ensure that duplicative regulatory burdens are not imposed on Nasdaq members. Second, Nasdaq is also amending its rules to reflect the name change of NASD to the Financial Industry Regulatory Authority, Inc. (''FINRA'') following its merger with elements of the New York Stock Exchange (''NYSE'') regulatory unit. As a result of this merger, the corporate name of the entity has changed, but NASD rules continue to be denominated as such.[7] Accordingly, references in the Nasdaq rules to NASD rules are not being changed at this time, but references to the corporate entity and its members are being changed. Third, Nasdaq is making a range of changes aimed at deleting obsolete references and correcting typographical errors.

[5] 17 CFR 240.17d–2.

[6] *See* Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4–517).

[7] The rules of FINRA include both NASD rules and NYSE Regulation rules incorporated by FINRA. *See http://www.finra.org/RulesRegulation/FINRARules/index.htm.*

Specifically, Nasdaq proposes to make the following changes:

• Amending Nasdaq Rule 1017 to conform the rule more closely to NASD Rule 1017 so that the rule continues to be covered by the 17d–2 Agreement. Nasdaq Rule 1017 pertains to approval of changes in ownership, control, or business operations by Nasdaq members. In SR–NASDAQ–2007–085,[8] Nasdaq adopted amendments to Nasdaq Rule 1017 to shorten the time-frame for review of applications under the rule and to simplify the standards for approval. These changes were intended to benefit Nasdaq members that are not required to become members of FINRA because they conduct a limited business that does not involve the carrying of customer accounts.

As a result of the amendments to the Nasdaq Rule, however, the content of NASD Rule 1017 and Nasdaq Rule 1017 are now somewhat different and therefore may not be considered eligible for coverage under the 17d–2 Agreement. However, Nasdaq believes that no useful regulatory purpose would be served by requiring duplicative applications to FINRA and Nasdaq, since a joint member could not implement a change requiring an application to FINRA until FINRA had granted approval. Accordingly, Nasdaq is amending the rule to reinstate the time frames for application review previously in effect and to incorporate by reference to NASD Rule 1014 the standards for approval of applications by FINRA members.[9] Thus, the coverage of the rule would be identical to the NASD rule for joint members, while the simplified rule would continue to be applicable to Nasdaq members that are not required to become members of FINRA. Nasdaq is also making conforming changes to Nasdaq Rules 1012 and 1014.

• Amending Nasdaq Rule 1060 to remove the registration exemption for

[8] *See* Securities Exchange Act Release No. 56917 (December 6, 2007), 72 FR 70632 (December 12, 2007) (SR–NASDAQ–2007–085).

[9] Nasdaq incorporates by reference a range of NASD rules, thereby ensuring that Nasdaq members and FINRA members are subject to comparable regulatory standards, reducing regulatory burdens on these members, and reducing the extent to which Nasdaq must amend its own rules to maintain comparable regulatory standards. In connection with this filing, Nasdaq plans to submit an amended letter to the Commission requesting an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to those Nasdaq rules that are effected solely by virtue of a change to a cross-referenced NASD rule. *See* Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy Morris, Secretary, Commission (January 12, 2006); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

associated persons of broker-dealers engaged exclusively in options trading. The exemption is inconsistent with recently approved rules for the NASDAQ Options Market, which requires registration of such persons.[10]

• Adopting new Nasdaq Rule 1160 and amending Nasdaq Rules 1120, 1150, and 3520 and IM–3011–2 to conform to changes to corresponding NASD rules [11] regarding the time frame for members to report changes in contact information. NASD Rule 1160 contemplates that FINRA members will use the NASD Contact System to report changes; because this system is not available to non-FINRA members at this time, the corresponding Nasdaq Rule requires use of this system by Nasdaq members that are FINRA members and submissions via e-mail or paper mail for other Nasdaq members.

• Amending Nasdaq IM–2110–3, IM–2110–6, and IM–2110–7, whose text is virtually identical to corresponding NASD rules, by requiring Nasdaq members to comply with the corresponding NASD rules, thereby incorporating by reference the NASD rules.[12] Similarly, Nasdaq is incorporating by reference new NASD Rules 2290,[13] 2342,[14] 2441,[15] and 3160.[16]

• Amending Nasdaq Rule 2320 and adopting IM–2320 to reflect changes made to the corresponding NASD Rules by SR–NASD–2004–026.[17]

• Amending Nasdaq Rule 2340 to reflect changes made to the corresponding NASD Rule by SR–NASD–2006–066.[18]

• Amending Nasdaq IM–2210–4, to adopt a simplified version of the changes made to NASD IM–2210–4 by SR–FINRA–2007–014.[19] Specifically, while NASD IM–2210–4 requires FINRA members advertising FINRA membership on their Web sites to provide a link to the FINRA Web site in order to provide investors with information about FINRA, Nasdaq believes that such a requirement would be inappropriate for a for-profit exchange such as Nasdaq. The Nasdaq rule, however, like the FINRA rule, will provide that members may indicate Nasdaq membership in any communication with the public, provided that the communication complies with the applicable standards of Nasdaq Rule 2210 (which governs member advertising) and neither states nor implies that Nasdaq, or any other corporate name or facility affiliated with Nasdaq, or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security.

• Amending Nasdaq Rule 3010 to reflect changes made to the corresponding NASD Rule by SR–NASD–2003–104.[20]

• Amending Nasdaq IM–4390 and Rules 3390, 4611, 4619, 4625, 4756, 4758, 4761, and 6430 (redesignated as Rule 3350), and deleting Nasdaq Rules 4602 and 4759 and IM–4759–1, to reflect the termination of the Intermarket Trading System Plan and the NYSE Direct + System.

• Amending Nasdaq Rule 4613 and IM–4390 to eliminate obsolete references to previously deleted rules.

• Amending Nasdaq Rule 4618 to clarify that transactions in any security, not just Nasdaq-listed securities, may be settled ''ex-clearing'' if the parties to the transaction agree.

• Amending Nasdaq Rule 4625 to reflect the previous deletion of a requirement that market maker quotations be reasonably related to the prevailing market.[21]

• Amending Nasdaq Rule 4751 to correct technical errors in the description of the scope of securities traded on the Nasdaq Market Center, the definition of ''Nasdaq ECNs,'' and the definition of the ''Price to Comply Post Order,'' and to remove obsolete language associated with the transition by the Nasdaq Market Center to the Regulation NMS environment.

• Amending Nasdaq Rule 4758 to clarify the description of Nasdaq's order routing options.

• Redesignating Nasdaq Rules 6430 and 6440 as Rules 3350 and 3351 and making amendments to reflect amendments to a corresponding NASD rule, Rule 5120, that were made by SR–NASD–2006–104.[22]

• Amending Nasdaq Rule 6951 to reflect changes to the corresponding NASD Rule made by SR–NASD–2007–028.[23]

• Amending Nasdaq Rules 9556, 9800, 9810, and 9860 to reflect changes to the corresponding NASD Rules made by SR–NASD–2005–061 and SR–NASD–2007–033.[24]

• Amending Nasdaq IM–10100 and Rules 10100 and 10102 to reflect the replacement by FINRA of the Rule 10000 Series with the Rule 12000 and Rule 13000 Series.[25] The NASD Rule 10000 Series governed all arbitration disputes submitted by members, associated persons and customers. The NASD replaced that single rule series with two rule series: The 12000 Series governing disputes with customers and the 13000 Series governing industry disputes. Nasdaq members are subject to the new NASD Rule 12000 and 13000 Series, just as they were subject to the old NASD 10000 Series.

• Amending Nasdaq Rule 11810 to reflect changes to the corresponding NASD Rule made by SR–NASD–2007–035.[26]

• Amending Nasdaq Rules 0115, 1002, 2210, 2211, 3010, 3110, 4380, 9120, and 11630 and IM–3011–1 and IM–4390 to correct typographical errors.

Amending Nasdaq Rules 0120, 0130, 1001, 1002, 1012, 1022, 1050, 1060, 1120, 2111, 2210, 2361, 2520, 3010, 3012, 3020, 3070, 3150, 3510, 4120, 4200, 4619, 4624, 6951, 6954, 6955, 8001, 8210, 8211, 9001, 9120, 9521, 9552, 9553, 9554, 9555, 9556, 9557, 9558, 9810, 10001, 10100, 11210, 11860, and 11870, and IM–1002–4, IM–1022–2, IM–2110–2, IM–10100, and IM–11130 to reflect the name change of NASD to FINRA.

• Amending Nasdaq Rule 2140 to reflect the change in the name of the Commission's Division of Market

[10] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and –080).

[11] *See* Securities Exchange Act Release No. 56179 (August 1, 2007), 72 FR 44203 (August 7, 2007) (SR–NASD–2007–034).

[12] *See supra* note 9.

[13] *See* Securities Exchange Act Release No. 56645 (October 11, 2007), 72 FR 59317 (October 19, 2007) (SR–NASD–2005–080).

[14] *See* Securities Exchange Act Release No. 55737 (May 10, 2007), 72 FR 27606 (May 16, 2007) (SR–NASD–2006–124).

[15] *See* Securities Exchange Act Release No. 54088 (June 30, 2006), 71 FR 38950 (July 10, 2006) (SR–NASD–2004–135).

[16] *See* Securities Exchange Act Release No. 54456 (September 15, 2006), 71 FR 56203 (September 26, 2006) (SR–NASD–2006–064).

[17] *See* Securities Exchange Act Release No. 54339 (August 21, 2006), 71 FR 50959 (August 28, 2006) (SR–NASDAQ–2004–026).

[18] *See* Securities Exchange Act Release No. 54811 (November 22, 2006), 71 FR 69161 (November 29, 2006) (SR–NASD–2006–066).

[19] *See* Securities Exchange Act Release No. 56615 (October 4, 2007), 72 FR 58136 (October 12, 2007) (SR–FINRA–2007–014).

[20] *See* Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104).

[21] *See* Securities Exchange Act Release No. 56759 (November 7, 2007), 72 FR 64102 (November 14, 2007) (SR–NASDAQ–2007–069).

[22] *See* Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (SR–NASD–2006–104).

[23] *See* Securities Exchange Act Release No. 56003 (July 2, 2007), 72 FR 37287 (July 9, 2007) (SR–NASD–2007–028).

[24] *See* Securities Exchange Act Release Nos. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR–NASD–2005–061); and 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR–NASD–2007–033).

[25] *See* Securities Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (SR–NASD–2003–158 and SR–NASD–2004–011).

[26] *See* Securities Exchange Act Release No. 56972 (December 14, 2007), 72 FR 73927 (December 28, 2007) (SR–NASD–2007–035).

Regulation to the Division of Trading and Markets.

• Amending Nasdaq IM–10100 to correct the names of several exchanges listed in the rule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(5) of the Act,[28] 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 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. The proposed rule change makes miscellaneous changes to Nasdaq rules to maintain appropriate parallelism with corresponding NASD rules, in order to prevent unnecessary regulatory burdens and promote efficient administration of the rules. The change also makes minor updates and corrections to certain Nasdaq rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of 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[29] and subparagraph (f)(6) of Rule 19b–4 thereunder.[30] As required under Rule 19b–4(f)(6)(iii),[31] Nasdaq provided 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, prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative for 30 days after the date of filing.[32] However, Rule 19b–4(f)(6)(iii)[33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay because the proposed rule change: (1) makes miscellaneous changes to Nasdaq rules in order to maintain appropriate parallelism with corresponding NASD rules, prevent unnecessary regulatory burdens, and promote efficient administration of the rules; and (2) makes minor updates and corrections to certain Nasdaq rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to immediately conform its rules to corresponding NASD rules. This will ensure that such Nasdaq rules will continue to be covered by the existing 17d–2 Agreement between Nasdaq and FINRA and that unnecessary duplicatory regulatory burdens are not imposed on Nasdaq members. Further, waiving the operative delay will allow Nasdaq to immediately make minor updates and corrections to certain Nasdaq rules, which are non-substantive and do not raise any regulatory issues. For these reasons, the Commission designates that the proposed rule change become operative immediately.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–054 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–054. 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 Nasdaq. 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–NASDAQ–2008–054 and should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15486 Filed 7–8–08; 8:45 am]

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[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] *Id.*

[33] *Id.*

[34] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58068; File No. SR–NYSE–2008–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Exchange Rule 36 (Communications Between Exchange and Member's Offices) To Make Permanent an Existing Portable Phone Pilot

June 30, 2008.

On March 17, 2008, the New York Stock Exchange LLC (''NYSE'' 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 make permanent an existing portable phone pilot. On March 27, 2008, and April 2, 2008, the Exchange submitted Amendments No. 1 and 2, respectively, to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 9, 2008.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 2.

I. Description of the Proposal

The Exchange proposes to make permanent NYSE Rule 36 (Communications Between Exchange Member's Offices), which permits Floor brokers and Registered Competitive Market-Makers (''RCMMs'')[4] to use on a pilot basis an Exchange authorized and issued portable phone (''Exchange Phone'') on the Exchange Floor (''Pilot''). The Commission originally approved the Pilot to be implemented for a six-month period[5] in 2003.[6] Since the inception of the Original Pilot, the Exchange extended the Pilot ten times, with the current Pilot set to expire on June 30, 2008.[7] In 2006, the Exchange incorporated RCMMs into the Pilot[8] and subsequently amended the Pilot to allow RCMMs to use Exchange Phones to call to and receive calls from their booths.[9]

NYSE Rule 36 governs the establishment of telephonic or electronic communications between the Exchange Floor and any other location. Prior to the Pilot, NYSE Rule 36 prohibited the use of portable phone communications between the Exchange Floor and any off-Floor location. Floor brokers could communicate from the Exchange Floor to off-Floor location only by means of a telephone located at a broker's booth. Such communication often involved a customer calling a broker at the booth for ''market look'' information. A broker could not use a portable phone in a trading crowd at the point of sale to speak with a person located off the Exchange Floor.

Currently, on a pilot basis, NYSE Rule 36 outlines the conditions under which Floor brokers and RCMMs may use Exchange Phones.[10] Only Exchange Phones are permitted to be used under the Pilot and any other type of portable phones are prohibited pursuant to NYSE Rule 36. A Floor broker may, with the Exchange's approval, engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. The Pilot permits both incoming and outgoing calls, provided all requirements of NYSE Rule 36 and other Exchange rules have been met.

During the permitted communication as provided in NYSE Rule 36, a broker may accept orders, provide status and oral execution reports as to orders previously received, and provide market look observations as historically have been routinely transmitted from a broker's booth location. A Floor broker, however, may not represent and execute any order received as a result of such communication unless the order is first properly recorded by the member and entered into the Exchange's Front End Systemic Capture (''FESC'') electronic database.[11] In addition, Exchange rules require that Floor brokers receiving orders from the public over Exchange Phones must be properly qualified to engage in such direct access business under NYSE Rules 342 and 345, among others.

The Pilot also allows RCMMs to use an Exchange Phone, solely to call and receive calls from their booths on the Exchange Floor, to communicate with their or their member organizations' off-Floor office, and to communicate with the off-Floor office of their clearing member organization to enter off-Floor orders and to discuss matters related to the clearance and settlement of transactions, provided the off-Floor office uses a wired phone line for these discussions. RCMMs and their or their member organization's off-Floor offices may not use Exchange Phones to transmit to the Exchange Floor orders for the purchase or sale of securities by public customers or any other agency business.

Under the Pilot, Floor brokers may not use call-forwarding or conference calling. Likewise, RCMMs, their booth

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57611 (April 3, 2008), 73 FR 19274.

[4] *See* NYSE Rule 107A, which defines and governs the registration and dealings of RCMMs.

[5] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) (''Original Pilot''). The Original Pilot permitted Exchange Phones to be used only by Floor brokers. *See* note 8 and 9 *infra* and accompanying text.

[6] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19) (delaying the implementation date for Exchange Phones from on or about May 1, 2003, to no later than June 23, 2003).

[7] *See* Securities Exchange Act Release Nos. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR–NYSE–2003–38) (extending the Pilot for an additional six months ending on June 16, 2004); 49954 (July 1, 2004), 69 FR 41323 (July 8, 2004) (SR–NYSE–2004–30) (extending the Pilot for an additional five months ending on November 30, 2004); 50777 (December 1, 2004), 69 FR 71090 (December 8, 2004) (SR–NYSE–2004–67) (extending the Pilot for an additional four months ending March 31, 2005); 51464 (March 31, 2005), 70 FR 17746 (April 7, 2005) (SR–NYSE–2005–20) (extending the Pilot for additional four months ending July 31, 2005); 52188 (August 1, 2005), 70 FR 46252 (August 9, 2005) (SR–NYSE–2005–53) (extending the Pilot for an additional six months ending January 31, 2006); 53277 (February 13, 2006), 71 FR 8877 (February 21, 2006) (SR–NYSE–2006–03) (extending the Pilot for an additional six months ending July 31, 2006); 54276 (August 4, 2006), 71 FR 45885 (August 10, 2006) (SR–NYSE–2006–55) (extending the Pilot for an additional six months ending January 31, 2007); 55218 (January 31, 2007), 72 FR 6025 (February 8, 2007) (SR–NYSE–2007–05) (extending the Pilot for an additional twelve months ending January 31, 2008); 57249 (January 31, 2008), 73 FR 7024 (February 6, 2008) (SR–NYSE–2008–10) (extending the Pilot for an additional three months ending April 30, 2008); and 57746 (April 30, 2008), 73 FR 25816 (May 7, 2008) (SR–NYSE–2008–34) (extending the Pilot to no later than the approval of SR–NYSE–2008–20 or June 30, 2008, the earlier thereof).

[8] *See* Securities Exchange Act Release No. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR–NYSE–2005–80).

[9] *See* Securities Exchange Act Release No. 54215 (July 26, 2006), 71 FR 43551 (August 1, 2006) (SR–NYSE–2006–51).

[10] *See also* Member Education Bulletins 2005–20 (November 28, 2005) and 2005–23 (December 2, 2005) (''MEBs''). MEBs describe the conditions for the use of a portable phone by Floor brokers and RCMMs, the acknowledgement procedure, and the rule text. These MEBs were previously filed as exhibits with the Commission in connection with the operation of the Pilot. *See* Securities Exchange Act Release No. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR–NYSE–2005–80). The Exchange represents that revised MEBs would be sent to all Floor brokers and RCMMs utilizing portable phones pursuant to NYSE Rule 36. The Commission notes that MEBs and acknowledgment forms attached thereto are part of this rule proposal.

[11] *See* NYSE Rule 123(e). *See also* Securities Exchange Act Release Nos. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25) and 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

personnel, their member organization's off-Floor office, and their clearing member organization's off-Floor office may not use call-forwarding or conference calling. Accordingly, Exchange Phones used by Floor brokers and RCMMs do not have call-forwarding or conference calling capabilities. The Exchange also prohibits booth phones used to make calls to and receive calls from RCMMs from having call-forwarding or conference calling features enabled. Further, Floor brokers and their member organizations must have procedures designed to deter anyone calling their Exchange Phone from using caller ID block or attempting to conceal the phone number from which the call is being made. Similarly, RCMMs and their member organizations must implement procedures designed to deter their or their member organization's off-Floor office and the off-Floor office of their clearing member organization from doing the same.

Use of the Exchange Phone by Floor brokers and RCMMs must comply with all other rules, policies, and procedures of both the federal securities laws and the Exchange, including the record retention requirements, as set forth in NYSE Rule 440 and Rules 17a–3 and 17a–4 under the Act. Further, every Floor broker and RCMM must sign a written agreement consenting to specified terms of usage in connection with the operation of the Pilot and their use of the Exchange authorized and provided portable phones.[12] For surveillance purposes, the Exchange receives records of all incoming and outgoing calls on Exchange Phones. The Exchange represents that it will continue to receive such records on a monthly basis.

Specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in communications from the specialist post to an off-Floor location.[13] The Exchange's proposal would not apply to specialists, who would continue to be prohibited from communicating from the post to upstairs trading desks or customers.[14]

The Exchange is proposing to adopt the Pilot on a permanent basis under the same rules and conditions that currently exist.

II. Discussion

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.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of the an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

The Exchange adopted the prohibition on the use of portable telephones on the Exchange Floor in 1988.[17] In approving the prohibition, the Commission noted that, by being able to communicate directly with a broker in the trading crowd, a customer (invariably, a large or institutional one) could have a significant time and place advantage. The Commission further noted that certain concerns could result from such advantage. The Commission, however, also observed that the approval of the prohibition did not foreclose an exchange from devising a program to permit the use of portable phones on the floor and that such prohibition was not the only approach consistent with the Act.

The Exchange subsequently proposed to permit on a pilot basis the use of Exchange Phones on the Exchange Floor. In approving the Original Pilot,[18] the Commission noted that Exchange Phones could provide more direct access to the Exchange's trading crowds and increase speed in the transmittal and execution of orders. The Commission, however, continued to express an ongoing concern and requested that, if the Exchange decides to request permanent approval, it submit information documenting the usage of the Exchange Phones, any problems that has occurred, and any advantages or disadvantages of such usage. The Commission noted that such information would help ensure that the Exchange Phones provide for fair access, with adequate monitoring of orders being taken and information being disseminated.

The Exchange has duly provided such information with each extension of the Pilot and in its proposal to permanently adopt the Pilot. Since the inception of the Original Pilot, the Commission also notes that the Exchange did not identify significant regulatory issues and also represented that that no administrative or technical problems, other than routine telephone maintenance issues, have occurred. Further, in its proposal to permanently adopt the Pilot, the Exchange states that there has been a reasonable degree of usage of the Exchange Phones. In addition, the Commission notes that there does not appear to be any complaints concerning fair access to the NYSE's trading floor as a result of the Pilot.[19] Rather, the Exchange states in its proposal that the Pilot demonstrates that the Exchange Phones facilitate communication without any corresponding drawbacks.

The Commission also notes that, as proposed to be permanently adopted, NYSE Rule 36 requires Floor brokers and RCMMs to comply with all rules, policies, and procedures of the Exchange and the federal securities law, including the record retention requirements. Additionally, a Floor broker would not be permitted to

[12] Floor brokers and RCMMs agree to comply with NYSE Rule 36, all other rules, policies, and procedures of both federal securities laws and the Exchange, including the record retention requirements of NYSE Rule 440 and Rules 17a–3 and 17a–4 under the Act, and acknowledge that the Exchange has the right to request from their Exchange Phone service provider any records relating to incoming and outgoing calls that NYSE Regulation, Inc. deems necessary. Floor brokers additionally agree that, to the extent they are aware that a customer or any other incoming caller is using a caller ID block, the Floor broker would request in writing that the customer/caller disable such block when calling the Floor broker. Such written request must be documented and a copy of the same retained. RCMMs acknowledge that they may only call and receive calls from the locations provided in NYSE Rule 36.22. RCMMs additionally agree to disable the functionality that allows call-forwarding, conference calling, caller ID block, or any other means to conceal the phone number from which the call is being made.

[13] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[14] NYSE Rule 36.30 provides that, with the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection may not be used for the purpose of transmitting to the Exchange Floor orders for the purchase or sale of securities but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm or through a member (on the Exchange Floor) of an options or futures exchange.

[15] 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).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 25842 (June 23, 1998), 53 FR 24539 (June 29, 2008) (SR–NYSE–87–18). The proposal resulting in the adoption of the prohibition was in response to a Commission order setting aside actions by the Exchange denying two of its members permission to install telephone connections to communicate from the Exchange Floor with non-member customers located off-Floor. *See* Securities Exchange Act Release No. 24429 (May 6, 1987). The Exchange's proposal ultimately approved by the Commission permitted access to non-member customers at the Floor booth but prohibited such access through portable phones in the trading crowd.

[18] *See* note 5 *supra*.

[19] The Commission notes that since the inception of the Original Pilot, the Commission received only one comment letter. The comment letter pertains to the Original Pilot and was supportive of it. *See* note 5 *supra*.

represent and execute an order unless first inputted in FESC. Floor brokers and RCMMs, moreover, are not permitted to use call-forwarding or conference calling and must implement procedures designed to deter anyone calling the Exchange Phones from concealing the phone number from which a call is being made. Further, the Exchange has the right to request from the Exchange Phone service provider any records relating to incoming and outgoing calls.[20] The Exchange represents that it has received, and will continue to receive, records of such calls on a monthly basis. With respect to Exchange Phones, these requirements and records should help the Exchange detect and deter any violations of the Exchange rules and the Act.

The Commission, therefore, finds that the proposal is consistent with the Act.[21] The conditions stated above should continue to aid the Exchange in surveilling for compliance with Exchange rules and the Act and address concerns identified in the adoption of the original prohibition.[22] The Commission also believes that the operation of the Pilot without incident since its inception helps to address the Commission's initial concerns. Accordingly, as noted by the Commission when it approved the Original Pilot, the Commission continues to believe that the Pilot helps to expedite orders and make the flow of information more direct.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSE–2008–20), as modified by Amendments No. 1 and 2 be, and it hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15485 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

[20] *See* note 10 *supra.*

[21] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Floor.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58079; File No. SR–NYSEArca–2008–69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Use of a New Order Type Known as Price Improving Orders and Quotes

July 2, 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 June 25, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various rules to permit the use of a new order type known as Price Improving Orders and Quotes that may be submitted in increments as small as one cent, and to govern their use. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to permit all authorized Exchange participants to submit Price Improving Orders and Quotes in increments smaller than the minimum price variation (''MPV'') in the security. The Exchange will designate the classes/series eligible for this penny pricing, and the penny pricing will be available electronically and in open outcry.

Price Improving Orders and Quotes will allow market participants to submit an order priced between the MPV that will be rounded to the nearest lower MPV bid or the nearest higher MPV offer for display, but would maintain the one-cent increment limit for trade allocation purposes. Without this order type, market participants would not be able to submit orders priced between the disseminated MPV. However, since the orders will be displayed in aggregate at the nearest MPV, the order type will not ''take away'' transparency that would already exist. Incoming market and marketable limit orders will receive price improvement when executed against Price Improving Orders or Quotes resting in the Consolidated Book. For example, where the NYSE Arca market is 1.00–1.20 and an order is received to buy 10 contracts at 1.08, NYSE Arca would disseminate a 1.05 bid for 10 contracts, and any subsequent sell market order received by the Exchange would trade at 1.08 for up to 10 contracts (after which the quote would revert back to 1.00–1.20).

The Exchange also proposes to allow OTP Holders to execute Price Improving Orders in open outcry in one-cent increments and to allow Market Makers to respond to a call for a market with bids and offers in one-cent increments. However, the Exchange will require OTP Holders, prior to effecting any transactions in open outcry in one-cent increments, to electronically ''sweep'' any Price Improving Orders or Quotes in the NYSE Arca System. The ''sweep'' would ensure that better-priced orders resting in one-cent increments are executed prior to the open outcry transaction and would also ensure that same priced orders receive executions consistent with existing rules governing priority of orders in the Consolidated Book when trading with an order represented in open outcry (NYSE Arca Rules 6.47 and 6.75).

The applicability of split-price priority under NYSE Arca Rule 6.75(h) to transactions effected under proposed

NYSE Arca Rule 6.73(b) would be determined by the Exchange, and the mechanics of split-price priority in those instances would be the same as the mechanics of split-price priority in five- and ten-cent increments.

In addition, open outcry penny pricing would generally be available in instances where a Floor Broker is attempting to cross an order pursuant to NYSE Arca Rule 6.47(a) through (d). However, it would not be available in those instances where a Floor Broker is utilizing the Exchange's Size Quote Mechanism (NYSE Arca Rule 6.47(f)).

The Exchange believes that this order type will provide investors the opportunity to trade at a better price than otherwise would be available—inside the disseminated best bid and offer for a security. The Exchange also believes that this order type may serve to increase liquidity to the extent that market participants find the order type results in better executions. Further, market participants may be incented to compete by putting forth their best price—priced in a penny increment—to potentially match or better any other trading interest resident in the system. This may result in more aggressive, rather than less aggressive, trading interest.

This rule change is based on Chapter VI, Section 1(e)(6) and Section 5 of the NASDAQ Options Rules [5] and Chicago Board Options Exchange Rule 6.13B.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of 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 [7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] As required under Rule 19b–4(f)(6)(iii),[9] NYSE Arca provided 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 5 days prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to the 30th day after the date of filing.[10] However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca requested that the Commission waive the 30-day operative delay and make the proposed rule change operative upon filing because the proposal is similar to rules on the Chicago Board Options Exchange and the NASDAQ Options Market,[12] raises no new issues, and will allow NYSE Arca to compete for Price Improving Orders and Quotes. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE 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–2008–69 and

[5] *See* Securities Exchange Act Release No. 57478 (March 12, 2008) 73 FR 14521 (March 18, 2008) (order approving SR–NASDAQ–2007–004, as modified by Amendment 2, and SR–NASDAQ–2007–080).

[6] *See* Securities Exchange Act Release No. 57716 (April 25, 2008), 73 FR 24329 (May 2, 2008) (SR–CBOE–2007–39) (order approving CBOE–2007–39 as modified by Amendment No. 2).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See id.*

[11] *Id.*

[12] *See supra* notes 5 and 6.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

should be submitted on or before July 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15512 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58059; File No. SR–OCC–2008–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the New Methodology for Adjusting Options Contracts for Cash Dividends and Distributions

June 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 2, 2008, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would adopt interpretative guidance relating to the new adjustment method for adjusting options contracts for cash dividends or distributions (''New Methodology'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

Generally, options are not adjusted to reflect ''ordinary'' cash dividends or distributions. Under OCC's existing By-Laws, which remain operative until the New Methodology becomes effective, a cash dividend is considered ordinary unless it is greater than 10% of the value of the underlying security on the dividend declaration date. Dividends greater than 10% under this definition usually trigger an options contract adjustment, with the criterion for adjustment being the size of the cash dividend. Under the New Methodology, a cash dividend or distribution will be deemed to be ordinary (regardless of size) if it is declared pursuant to a policy or practice of paying such dividends on a quarterly or other regular basis. Dividends paid outside such practice would be considered extraordinary. Extraordinary dividends usually would trigger a contract adjustment unless the amount is less than $12.50 per contract (*i.e.*, the minimum size threshold). The New Methodology will be effective for cash dividends and distributions announced on or after February 1, 2009, but will not be applied to certain grandfathered flex options as described in File No. SR–OCC–2006–01.[5]

Interpretative Guidance

OCC's adoption of the New Methodology has prompted market participants to ask how the New Methodology would be administered and applied. The OCC Securities Committee has reviewed those questions and has developed responses thereto, which OCC is proposing to adopt as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule (*i.e.*, Article VI, Section 11A of OCC's By-Laws). The responses are intended to provide investors with useful guidance on how the New Methodology would be applied in practice, subject to an adjustment panel's authority to make adjustment decisions on a case-by-case basis and to make exceptions to the general adjustment rules in cases where such exceptions are determined appropriate.[6] The interpretative guidance, which is attached as Exhibit 5 to the proposed rule change, reviews the mechanics of adjustments, the definition of ordinary cash dividends and distributions, the rationale for the New Methodology, the impact of the minimum size threshold, and actual and hypothetical examples to illustrate the application of the New Methodology.[7] OCC, however, does not propose to publish the interpretative guidance in its By-Laws and Rules. Rather, it would be published on OCC's public website, made available in an information memorandum accessible to clearing members or otherwise available in hard copy form on request.

The proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to OCC because it provides market participants with interpretative guidance on the application of the New Methodology which will be applied to adjustments for cash dividends and distributions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1)[10] thereunder because the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).

[6] Adjustments are individually determined by an adjustment panel of the OCC Securities Committee. Actions of an adjustment panel constitute the action of the Securities Committee. *See* Article VI, Section 11(c) of OCC's By-Laws.

[7] Exhibit 5 of the proposed rule change can be found on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/sr_occ_08_10.pdf*.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2008–10 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2008–10. 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. The text of the proposed rule change is available at OCC, the Commission's Public Reference Room, and *http://www.theocc.com/publications/rules/proposed_changes/sr_occ_08_10.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2008–10 and should be submitted on or before July 30, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15483 Filed 7–8–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11288 and #11289]

Wisconsin Disaster Number WI–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

Effective Date: 06/20/2008.

Physical Loan Application Deadline Date: 08/13/2008.

EIDL Loan Application Deadline Date: 03/13/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Wisconsin, dated 06/14/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Washington, Waukesha, Winnebago, Fond Du Lac, Iowa, Marquette, Grant, Kenosha, Rock, Sheboygan, Dodge, Green

Contiguous Counties: (Economic Injury Loans Only):

Illinois: Boone, Jo Daviess, Lake, McHenry, Stephenson, Winnebago

Iowa: Dubuque

Wisconsin: Calumet, Jefferson, Lafayette, Manitowoc, Outagamie, Waupaca, Waushara

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15263 Filed 7–8–08; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice: 6285]

60-Day Notice of Proposed Information Collection: DS–234, Application for Special Immigrant Visa and Alien Registration, OMB Number 1405–0015

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Application for Special Immigrant Visa.

• *OMB Control Number:* 1405–0015.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

• *Form Number:* DS–234.

• *Respondents:* Iraqi immigrant visa applicants.

• *Estimated Number of Respondents:* 12,000 per year.

• *Estimated Number of Responses:* 12,000 per year.

• *Average Hours Per Response:* 20 minutes.

• *Total Estimated Burden:* 4,000 hours per year.

• *Frequency:* Once per respondent.

• *Obligation to Respond:* Required to Obtain or Retain U.S. resettlement benefits

DATES: The Department will accept comments from the public up to 60 days from July 9, 2008.

ADDRESSES: You may submit comments by the following method:

• *E-mail: FiresteinJY@state.gov* (Subject line must read DS–234 SIV Form).

• *Mail* (paper, disk, or CD-ROM submissions): PRM/Admissions, 2401 E

[11] 17 CFR 200.30–3(a)(12).

Street, NW., Suite L505, SA–1, Washington, DC 20522

You must include the DS form number (DS–234), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Jessica Firestein of the Office of Admissions, U.S. Department of State, 2401 E. Street, NW. L–505, Washington, DC 20522, who may be reached at *firesteinjy@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–234 is being added to this collection to elicit information used to determine the eligibility of Iraqis and Afghan nationals applying for special immigrant visas.

Methodology: The SIV Bio-data information form (DS–234) is submitted electronically by the applicant to the National Visa Center, which will forward the forms to the Refugee Processing Center of Bureau of Population, Refugees and Migration.

Dated: June 28, 2008.

Lawrence Bartlett,

Deputy Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. E8–15591 Filed 7–8–08; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Delegation of Authority No. 314]

Delegation by the Deputy Secretary of State to the Under Secretary for Arms Control and International Security of Authority in Section 1821(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and delegated to me by Delegation of Authority 245, I hereby delegate to the Under Secretary for Arms Control and International Security, to the extent authorized by law, the function conferred on the Secretary of State in Section 1821(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Under Secretary for Political Affairs may at any time exercise any authority or function delegated by this delegation of authority. The authority of the Under Secretary for Political Affairs is effective as long as Delegation of Authority 280, dated May 2, 2005, is in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: June 30, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–15581 Filed 7–8–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

ITS Joint Program Office; Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC). The meeting will be held on July 31, 2008, 1 p.m. to 5 p.m. and August 1, 2008, 8 a.m. to 1 p.m. The meeting will take place at the Courtyard by Marriott Capitol Hill/Navy Yard Hotel, 140 L Street, SE., Washington, DC 20003.

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and chartered on February 7, 2008, was created to advise the Secretary of Transportation on all matters relating to the study, development and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office, the ITSPAC will make recommendations to the Secretary regarding ITS program needs, objectives, plans, approaches, contents, and progress.

The following is a summary of the meeting's tentative agenda. Day 1: (1) Introductory Remarks; (2) Crosswalk: Existing ITS Program Goals and Activities to Proposed New Program Goals and Focus Areas; (3) RITA Administrator Remarks; (4) USDOT World Congress Activity Update; (5) University Transportation Centers Coordination Activities Update; and (6) ITS Advisory Committee Advice Memorandum Update. Day 2: (1) Agenda and Objective Review; (2) ITS Initiatives Program Updates; (3) General Discussion; (4) Summary and Wrap-up; and (5) Next Steps.

Attendance is open to the public, but limited space will be available on a first come, first served basis. With the approval of Ms. Shelley Row, the Committee Designated Federal Official, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should contact Ms. Marcia Pincus, the Committee Management Officer, at (202) 366–9230.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Marcia Pincus, Room E33–401, 1200 New Jersey Avenue, SE., Washington, DC 20590 or faxed to (202) 493–2027. The ITS Joint Program Office requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Pincus at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations (41 CFR Part 102–3)

covering management of Federal advisory committees.

Issued in Washington, DC, on the 25th day of June, 2008.

Shelley Row,

Director, ITS Joint Program Office.

[FR Doc. E8–15602 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability and Request for Comment on a Draft Environmental Impact Statement (EIS) for the Spaceport America Commercial Launch Site, Sierra County, NM

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

ACTIONS: Notice of Availability, Notice of Public Comment Period, Notice of Public Hearings, and Request for Comment.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of and requesting comments on the Draft EIS for the Spaceport America Commercial Launch Site, Sierra County, New Mexico. The Federal Aviation Administration (FAA), Office of Commercial Space Transportation is the lead Federal agency for the development of this EIS. Cooperating agencies include the Bureau of Land Management; the National Park Service; United States Department of the Army, White Sands Missile Range (WSMR); and the National Aeronautics and Space Administration.

The Draft EIS was prepared in response to an application for a launch site operator license from the New Mexico Spaceport Authority (NMSA). Under the Proposed Action, the FAA would issue a launch site operator license to NMSA to operate a launch facility capable of accommodating both horizontal and vertical launches of suborbital launch vehicles (LVs). The vehicles may carry space flight participants, scientific experiments, or other payloads. The proposed site is located in Sierra County, approximately 30 miles southeast of Truth or Consequences, New Mexico, and 45 miles north of Las Cruces, New Mexico. The Draft EIS addresses the potential environmental impacts of issuing a launch site operator license for horizontal launches only (Alternative 1), vertical launches only (Alternative 2), and the No Action Alternative.

DATES: The public comment period for the NEPA process begins with the publication of the U.S. Environmental Protection Agency's notice in the **Federal Register** on July 3, 2008. To ensure that all comments can be addressed in the Final EIS, comments on the draft must be received by the FAA no later than August 18, 2008.

A paper copy and a CD version of the Draft EIS may be reviewed for comment during regular business hours at the following locations:

Hatch Public Library, P.O. Box 289, Hatch, NM 87937

Sunland Park Community Library, 984 McNutt Road, Bldg. F–10, Sunland Park, NM 88063

Thomas Branigan Memorial Library, 200 E Picacho Ave., Las Cruces, NM 88001

Valley Public Library, 136 N. Main, Anthony, NM 88021

Alamogordo Public Library, 920 Oregon Ave., Alamogordo, NM 88310

Mescalero Community Library, 101 Central Ave., Mescalero, NM 88340

Michael Nivision Library, 90 Swallow Place, Cloudcroft, NM 88317

Truth or Consequences Public Library, 325 Library Lane, Truth or Consequences, NM 87901

Truth or Consequences Public Library—Downtown, 401 Foch St., Truth or Consequences, NM 87901

The FAA is holding a total of six public hearings on the Draft EIS. At these meetings, the FAA will present information about the Draft EIS and the environmental review process. The purpose of the public hearings is to afford the public and other interested parties the opportunity to comment on the economic, social, and environmental effects of the Proposed Action. Members of the public will be provided the opportunity to submit both written and oral comments. The FAA will transcribe oral comments. All comments received during the comment period will be given equal weight and be taken into consideration in the preparation of the Final EIS. The public hearings will be held at the following locations.

- August 5, 2008, 2 p.m. and 6:30 p.m., Alamogordo City Hall (Commission Chambers), 1376 E. Ninth St., Alamogordo, NM (505–439–4205).
- August 6, 2008, 2 p.m. and 6:30 p.m., Truth or Consequences Civic Center, 400 West Fourth St., Truth or Consequences, NM (575–894–4400).
- August 7, 2008, 2 p.m. and 6:30 p.m., Doña Ana County Government Center, 845 North Motel Blvd., Las Cruces, NM (575–647–7200).

The FAA has posted the Draft EIS on the FAA Web site at *http://ast.faa.gov*. In addition, CDs with the Draft EIS were sent to persons and agencies on the distribution list (found in Chapter 8 of the Draft EIS).

ADDRESSES: Comments regarding the Draft EIS should be mailed to FAA Spaceport America EIS, c/o ICF International, 9300 Lee Highway, Fairfax, VA 22031. Comments also can be sent by e-mail to *SpaceportAmericaEIS@icfi.com* or fax to (703) 934–3951.

ADDITIONAL INFORMATION: Under the Proposed Action, the FAA would issue a launch site operator license to NMSA that would allow the State to operate the proposed Spaceport America Commercial Launch Site for both horizontal and vertical suborbital LV launches. Horizontal LVs would launch and land at the proposed Spaceport America airfield. Vertical LVs would launch from Spaceport America and either land at Spaceport America or at WSMR. Rocket-powered vertical landing vehicles would land on either the Spaceport America airfield or a vertical launch/landing pad.

In addition, the Proposed Action includes construction of facilities needed to support the licensed launch activities at the proposed launch site. Development of Spaceport America infrastructure would occur in two phases. The total area of land disturbed by construction would be approximately 970 acres; the total area of the final facilities footprint would be approximately 145 acres. The proposed Spaceport America boundary would encompass approximately 26 square miles. This area currently contains both State and private land.

Operational activities in support of the Proposed Action would begin as soon as the phased construction activities related to the Proposed Action were completed. The operational activities that may have environmental consequences and would support, either directly or indirectly, licensed launches include:

- Transport of Launch Vehicles to the Assembly or Staging Areas.
- Transport and Storage of Rocket Propellants and Other Fuels.
- Launch, Landing and Recovery Activities for Horizontal Vehicles.
- Launch, Landing and Recovery Activities for Vertical Vehicles.
- Other Activities.

—Ground-Based Tests and Static Firings.

—Training.

—X Prize Cup Events.

The FAA identified two alternatives and the No Action Alternative to the

Proposed Action, which are considered in the draft EIS. Under Alternative 1, the FAA would consider issuing a launch site operator license only for the operation of a launch site to support horizontal launches. This is considered a feasible alternative because a significant number of launches of horizontal LVs are projected, and most X Prize Cup activities would be located at the airfield.

Under Alternative 2, the FAA would consider issuing a launch site operator license only for the operation of a launch site to support vertical launches. This is considered a feasible alternative because a significant number of launches are projected to be of vertical LVs.

Under the No Action Alternative, the FAA would not issue a launch site operator license to the NMSA. Subsequently, the need to support commercial launches and host the X Prize Cup would not be met by the State of New Mexico.

Resource areas were considered to provide a context for understanding and assessing the potential environmental effects of the Proposed Action, with attention focused on key issues. The resource areas considered included compatible land use; Section 4(f) lands and farmlands; noise; visual resources and light emissions; historical, architectural, archaeological, and cultural resources; air quality; water quality, wetlands, wild and scenic rivers, coastal resources, and floodplains; fish, wildlife, and plants; hazardous materials, pollution prevention, and solid waste; socioeconomics, environmental justice, and children's environmental health and safety risks; and energy supply and natural resources. Construction impacts and secondary (induced) impacts are also considered. Additional analyses considered in the appendices include geology and soils; mineral resources; air space; health and safety; and transportation.

FOR FURTHER INFORMATION CONTACT: Stacey M. Zee (AST–100), Office of Commercial Space Transportation, 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–9305; E-mail *stacey.zee@faa.gov*.

Issued in Washington, DC on July 2, 2008.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. E8–15545 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–25]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 21, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25466 using any of the following methods:

- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web Site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 2, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25466.
Petitioner: Southwest Airlines Co.
Section of 14 CFR Affected: §§ 121.391(a) and 121.393(b).
Description of Relief Sought: To clarify or amend Southwest Airlines, Co. (Southwest), current Exemption No. 9382, which allows Southwest to substitute a pilot for one required flight attendant crewmember during boarding at an intermediate stop and to reduce the number of required flight attendants onboard during the deplaning of passengers at an intermediate stop. The clarification or amendment Southwest seeks would broaden the exemption to include all stops from the time the aircraft door is opened upon arrival at the gate until the door is closed prior to the next flight operation. Southwest also requests that the certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, for all stops, if these persons are identified to the passengers.

[FR Doc. E8–15481 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

First Tier Environmental Impact Statement: Jackson County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a First Tier Environmental Impact Statement (EIS) will be prepared for proposed improvements to I–70 from the end of the last ramp termini east of the Missouri and Kansas state line to east of

the I–470 interchange, including the entire Kansas City Downtown Central Business District (CBD) Freeway Loop, in Jackson County, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 636–7104; or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–2803.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a First Tier EIS to consider the impacts of improvements to I–70 from the end of the last ramp termini east of the Missouri and Kansas state line to east of the I–470 interchange, including the entire Kansas City downtown CBD freeway loop, in Jackson County, Missouri. The project length is approximately 18 miles (20 miles with freeway loop segments).

MoDOT, in partnership with Mid-America Regional Council (MARC), and the Kansas City Area Transportation Authority (KCATA), completed a Major Investment Study (MIS) for the I–70 corridor in Jackson County in November, 2004. The MIS evaluated the I–70 corridor in a general nature and recommended an improvement strategy that would reconstruct and widen the existing facility from Kansas City's downtown CBD freeway loop to the Route F/H interchange in Oak Grove, Missouri. This strategy also included redesigning access and interchanges for the entire CBD freeway loop.

FHWA and MoDOT are now preparing a First Tier EIS to develop an improvement strategy for the highway elements of the I–70 corridor, using the MIS Statement of Purpose and Need and Strategy Packages as the foundation. The First Tier EIS will coordinate with completed and ongoing studies. These studies include the I–70 Transit Alternatives Analysis; the Kansas City, Missouri's Downtown CBD Study; the I–29/I–35 Paseo Bridge Corridor EIS; the I–470 Purpose and Need study; and the I–70 Supplemental EIS study.

Strategies to be considered include (1) no build; (2) highway widening and interchange improvement strategies; and (3) transportation system management options. The First Tier EIS will seek to determine sections of independent utility over this 18-mile stretch of I–70 that will become the basis for second tier environmental studies (20 miles with the freeway loop segments).

The First Tier EIS will conform to the environmental review process as established in Section 6002 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The Section 6002 environmental review process requires the following activities: Identification and invitation of cooperating and participating agencies; establishment of a coordination plan; and opportunities for additional agency and public comment on the project's purpose and need, strategies, and methodologies for determining impacts.

As part of the scoping process, an interagency coordination meeting will be held with federal and state resource agencies and local agencies. In addition, informational meetings with the public and community representatives will be held to solicit input on the project. The Study Management Team from the I–70 MIS will be re-established and will consist of agency staff from MoDOT, MARC, KCAT, and other identified local participating agencies. A location public hearing will be held to present the findings of the Draft First Tier EIS. Public notice will be given announcing the time and place of all public meetings and the hearing. The Draft First Tier EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the First Tier EIS should be directed to the FHWA or MoDOT at the addresses provided above. Concerns in the study area include potential impacts to communities, cultural resources, and rivers.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 27, 2008.

Peggy J. Casey,

Environmental Project Engineer, Jefferson City.

[FR Doc. E8–15611 Filed 7–8–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: August 7, 2008, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: July 2, 2008.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 08–1426 Filed 7–7–08; 2:54 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before September 8, 2008.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;

- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form, or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following records and forms:

Title: Claim-Alcohol, Tobacco, and Firearms Taxes.

OMB Number: 1513–0030.

TTB Form Number: 5620.8.

Abstract: This form, along with other supporting documents, is used to obtain credit, remission, and allowance of tax on taxable articles (alcohol, beer, tobacco products, firearms, and ammunition) that have been lost and to obtain refund of overpaid taxes and abatement of overassessed taxes. It is also used to request a drawback of tax paid on distilled spirits used in the production of nonbeverage products.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Burden Hours: 10,000.

Title: Report of Wine Premises Operations.

OMB Number: 1513–0053.

TTB Form Number: 5120.17.

Abstract: TTB F 5120.17 is used to monitor wine operations, to ensure collection of wine tax revenue, and to ensure wine is produced in accordance with law and regulations. This report also provides raw data on wine premises activity.

Current Actions: We are making changes, such as providing for quarterly reporting, and making minor corrections to this information collection, and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,329.

Estimated Total Annual Burden Hours: 29,616.

Title: Marks on Wine Containers.

OMB Number: 1513–0092.

TTB Recordkeeping Requirement Number: 5120/3.

Abstract: TTB requires that wine on wine premises be identified by statements of information included on labels or contained in marks. TTB uses this information to validate the receipt of excise tax revenue by the Federal government. The record retention period is only required as long as the container is used for storing wine.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,560.

Estimated Total Annual Burden Hours: One (1).

Title: Tobacco Bond—Surety and Tobacco Bond—Collateral.

OMB Number: 1513–0103.

TTB Form Numbers: 5200.26 and 5300.25, respectively.

Abstract: TTB requires a corporate surety bond or a collateral bond to ensure payment of the excise tax on tobacco products and cigarette papers and tubes removed from the factory or warehouse. TTB F 5200.26 and 5300.25 identify the agreement to pay and the persons from which TTB will attempt to collect any unpaid excise tax. Manufacturers of tobacco products or cigarette papers and tubes and proprietors of export warehouses, along with corporate sureties if applicable, are the respondents for these TTB forms. These forms are filed with collateral sufficient to cover the excise tax on tobacco products and cigarette paper and tubes.

Current Actions: There are no changes to this information collection and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden Hours: 25.

Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

OMB Number: 1513–0119.

TTB Form Number: None.

Abstract: TTB requires importers of natural wine to certify compliance with proper cellar treatment standards. This certification is necessary to comply with statutory requirements.

Current Actions: There are no changes to this information collection and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,000.

Estimated Total Annual Burden Hours: 6,600.

Dated: July 3, 2008.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E8–15559 Filed 7–8–08; 8:45 am]

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Federal Register

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July 9, 2008

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 250, 285, and 290

Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 285, and 290

[Docket ID: MMS–2008–OMM–0012]

RIN 1010–AD30

Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; notice of availability of the draft environmental assessment.

SUMMARY: The MMS is proposing regulations that would establish a program to grant leases, easements, and rights-of-way (ROW) for alternative energy project activities on the Outer Continental Shelf (OCS) as well as for certain previously unauthorized activities that involve the alternate use of existing facilities located on the OCS; and would establish the methods for sharing revenues generated by this program with nearby coastal States. These regulations are also intended to ensure the orderly, safe, and environmentally responsible development of alternative energy sources on the OCS. The MMS is developing this program and proposed regulations under the authority granted the Secretary of the Interior (Secretary) by the Energy Policy Act of 2005 (EPAct), which amended the Outer Continental Shelf Lands Act (OCS Lands Act). Under this new authority, the Secretary maintains discretionary authority to issue leases, easements or ROWs on the OCS for previously unauthorized activities that: Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

The MMS has prepared a Draft Environmental Assessment (EA) analyzing this proposed rule. The Draft EA incorporates by reference the Programmatic Environmental Impact Statement (EIS) *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007*. This Draft EA was prepared to assess any impacts of this proposed rule. We are furnishing this notification to allow other agencies and the public an opportunity to review and comment on the Draft EA.

All comments received on this proposed rulemaking and the Draft EA will become part of the public record and will be available for review.

DATES: Submit comments on the proposed regulation by September 8, 2008. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this rule by August 8, 2008. This does not affect the deadline for the public to comment to MMS on the proposed regulations. Submit comments on the Draft Environmental Assessment by September 8, 2008.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD30 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Under the tab ''More Search Options,'' click Advanced Docket Search, then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2008–OMM–0012 to submit public comments and to view supporting and related materials available for this rulemaking. 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. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior, Minerals Management Service, Attention: Regulations and Standards Branch (RSB), 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 1010–AD30'' in your comments and include your name and return address. The MMS will post all comments on Regulations.gov.
- Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD30, Office of Management and Budget; 202–395–6566 (fax); e-mail *oira_docket@omb.eop.gov*. Please also send a copy to MMS.
- The Draft EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm*. You may submit comments on the Draft Environmental Assessment in one of the following two ways:
  - In written form enclosed in an envelope labeled ''Alternative Energy Program Rulemaking Draft Environmental Assessment'' and mailed (or hand carried) *to the Branch Chief, Environmental Assessment Branch, Minerals Management Service, Mail Stop 4042, 381 Elden Street, Herndon, Virginia 20170*.
  - Electronically to the MMS e-mail address: *alternative@mms.gov*.

MMS is requesting comments on specific items identified throughout the preamble. For your convenience in commenting, we have compiled a list of these items at the end of the preamble.

FOR FURTHER INFORMATION CONTACT: *Proposed rule:* Maureen Bornholdt, Program Manager, Offshore Alternative Energy Programs, at 703–787–1300 or *maureen.bornholdt@mms.gove* or Amy C. White, Regulations and Standards Branch, at (703) 787–1665 or *amy.white@mms.gov*.

Draft Environmental Assessment: James F. Bennett, Chief, Branch of Environmental Assessment, at (703) 787–1660.

SUPPLEMENTARY INFORMATION:

Background

Statement of Purpose

Sufficient domestic sources of energy are vital to expanding the Nation's economy and enhancing Americans' quality of life. However, an imbalance exists between our energy consumption and domestic energy production that makes it vital to find ways to narrow the gap between the amount of energy used and the amount domestically produced. There is no single solution for narrowing this gap, but there are several means available. Increasing the Nation's supply of renewable energy produced from domestic sources will be a key part of any strategy to meet this goal.

According to the Department of Energy's Energy Information Administration (EIA) 2007 Annual Energy Outlook, public and private wind and other renewable energy generating sectors of our economy are the fastest growing energy sources in the United States (US). The EIA estimates that in 2030 renewable energy will account for over 10 percent of domestic energy production and about 7 percent of consumption. The Energy Policy Act of 2005 (EPAct) encourages the development of renewable energy resources as part of an overall strategy to develop a diverse portfolio of domestic energy supplies for the future. Section 388 of the EPAct gave the Department of the Interior new

authority to grant leases, easements, and ROWs for the development of promising new energy sources such as offshore wind, wave, current, and solar energy and for ensuring that alternative energy development on the OCS proceeds in a safe and environmentally responsible manner. The Secretary of the Interior delegated to the MMS the new authority that was conferred by the EPAct.

Enactment of the EPAct recognized the need for an unambiguous outline of authorities pertaining to energy-related activities on the OCS. Before the EPAct, as various agencies of the Federal government received proposals for innovative, non-traditional energy-related projects on the OCS, it became evident that—with limited exceptions—there existed no clear Federal authority for granting rights to use the seabed for such projects. This lack of clearly outlined authority was a significant impediment to the development of renewable energy on the OCS, and dampened efforts by potential energy developers and Federal regulators to seriously develop and consider offshore projects. Congress recognized that management of alternative energy and alternate use activities would require comprehensive authority to permit access in a fair and equitable manner, to ensure environmental and operational compliance, and to achieve a fair return to the Nation. As the Federal government's primary manager of offshore energy development, the Department of the Interior, MMS, was given this comprehensive new authority.

Mandate of Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act to authorize the Secretary to issue leases, easements, or rights-of-way on the OCS for activities that:

(i) Support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium;

(ii) Support transportation of oil or natural gas, excluding shipping activities;

(iii) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(iv) Use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

This new authority does not apply to activities that are otherwise authorized by law, including those covered by the OCS Lands Act, the EPAct, the Deepwater Port Act of 1974, and the Ocean Thermal Energy Conversion Act of 1980. On March 20, 2006, the Secretary of the Interior delegated to the MMS the new authority that was conferred by the EPAct.

In addition, the EPAct of 2005 requires the Secretary to share with nearby coastal States a portion of the revenues received by the Federal Government from authorized alternative energy and alternate use projects on certain areas of the OCS. This proposed rule would implement this mandate and describe the methods to be used for identifying what projects are covered by this requirement, for determining which States are eligible to receive shares of the revenues, and—if two or more States are eligible to receive revenues from the same project—for allocating the appropriate share to each eligible State.

The EPAct included a requirement that the Secretary develop any necessary regulations to implement the new authority. This Notice of Proposed Rulemaking applies to the activities described in (iii) and (iv) above (i.e., those relating to production, transportation, or transmission of energy from sources other than oil and gas and to the use of existing OCS facilities for energy-related or other authorized marine-related purposes). Regulations for activities described in (i) and (ii) above (i.e., those relating to oil and gas) will be promulgated separately in appropriate parts of the existing MMS oil and gas regulations.

While the MMS will have the lead in authorizing OCS alternative energy and alternate use activities, we recognize that other Federal government agencies have regulatory responsibility in such activities and the need to consider them fully. The new authority does not expressly supersede or modify existing Federal laws, and all activities must comply fully with such laws. As directed by the EPAct provision calling for promulgation of regulations, the MMS consulted with other Federal agencies, as appropriate, throughout the rulemaking process, and, to the extent provided by established DOI rulemaking procedures. We also consulted with the governors of affected States and others in the promulgation of this rule.

In addition to providing the authority to issue leases, easements, and rights-of-way, the EPAct included a requirement that any activity permitted under this authority be ''carried out in a manner that provides for—

(A) Safety;

(B) Protection of the environment;

(C) Prevention of waste;

(D) Conservation of the natural resources of the outer Continental Shelf;

(E) Coordination with relevant Federal agencies;

(F) Protection of national security interests of the United States;

(G) Protection of correlative rights in the outer Continental Shelf;

(H) A fair return to the United States for any lease, easement, or right-of-way under this subsection;

(I) Prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;

(J) Consideration of—

(i) The location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and

(ii) Any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;

(K) Public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and

(L) Oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.''

The MMS addresses these items, as appropriate, in this rulemaking.

Summary of Advance Notice of Proposed Rulemaking (ANPR) Comments

Background

On December 30, 2005, the MMS issued an ANPR (70 FR 77345) requesting comments on the program requirements. Comments pertaining to specific subparts of the proposed regulations are summarized in the subpart-by-subpart discussion, as appropriate.

The ANPR requested public comments on five major program areas:

(1) Access to OCS lands and resources;

(2) Environmental information, management, and compliance;

(3) Operational activities;

(4) Payments and revenues; and

(5) Coordination and consultation.

The MMS received 149 comments from 26 States and the District of Columbia. Comments came from private citizens (60), alternative energy industries and associations (27), environmental organizations (19), State and local governments (19), Federal agencies (8), non-government organizations (6), universities (5), congressional representatives (3), small business (1), and the oil and gas industry (1).

The vast majority of comments addressed OCS alternative energy activities, and we received a few comments on use of existing facilities. No single issue dominated the comments, and responses within a given program area were wide-ranging. The comments generally were supportive of alternative energy development on the OCS and activities that use existing OCS facilities. Many advised the MMS to proceed with caution as we develop the program and supporting regulations and advocated early stakeholder involvement with both the program and the individual project permitting. Those familiar with the OCS oil and gas program often suggested we use that program as a model for consultation and environmental compliance. Some alternative energy industry and environmental organizations suggested that the MMS establish a structured, rigid process, citing the need for predictability and for compliance and timeliness in reviews. Others advocated a flexible approach in view of the fledgling nature of offshore alternative energy technologies and suggested that the MMS address each project on a case-by-case basis. A majority of comments identified preparation of a programmatic environmental impact statement (PEIS) under the National Environmental Policy Act (NEPA) as a necessary and constructive first step.

Comments addressing the major program areas often were interrelated. For example, comments on access and operations were often directly linked with concerns for the environment (e.g., access should not be permitted in areas of environmental sensitivity). Views on payments appeared to be influenced by the perspective of the commenter on access issues (e.g., fee structure suggestions depended on whether MMS used the project's actual footprint or a lease block system). Coordination and consultation suggestions centered on the opportunity to address environmental concerns (e.g., focused on input during the program and individual project NEPA process).

More information on the ANPR, its respondents, and their comments is available at the MMS OCS Public Connect Web site, at *https://ocsconnect.mms.gov/pcs-public/do/ProjectDetailView?objectId=0b011f8080050473.*

Access for OCS Lands

Comments on area identification described the entire spectrum of access: from MMS conducting in-depth studies to select specific areas to lease to MMS opening most of the OCS. While comments recommended MMS fashioning our program after the Bureau of Land Management (BLM), the European, or the Federal Energy Regulatory Commission model, comments were consistent about MMS requiring due diligence from any developer.

Some commenters suggested that we use the PEIS to identify environmentally sensitive areas to be permanently excluded from development, and some expressed concerns that we would lease any area without considering the full range of possible impacts and alternatives. While others opined that if MMS initially excluded areas, those areas may never become available even if technology and uses changed in the future. MMS decided not to propose limiting areas available for possible development. As we begin to better understand the impacts, limitations, and benefits of renewable energy projects, we will be in a better position to select appropriate sites for development. MMS does not want to exclude potential sites, since the future technology may be different from the technology available today, with different impacts.

Other commenters advocated that all U.S. waters should be candidate areas for the development of renewable energy projects and that potential developers, who are in the best position to propose sites, should be given the widest possible latitude to identify potential resources and sites. One commenter pointed out that Congress already identified those OCS areas that should be categorically excluded from renewable energy development: ''any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.''

As some responders expressed the belief that renewable energy production does less damage to the environment than oil and gas production, they suggested that MMS subject the renewable projects to less rigorous environmental review and open more areas to development, regardless of other impacts. Others commented MMS should consider all impacts on existing resources and uses citing fisheries, public safety, shipping lanes, aircraft, migratory routes (bird and mammal), and access to sand and gravel and oil and gas resources. These comments were often coupled with the suggestion that any fees for the renewable energy development should compensate for impacts and possible loss of future uses. The MMS will strictly adhere to the statutory requirements such as NEPA, CZMA, etc. All projects will undergo appropriate review.

Many comments expressed concern that a competitive bidding process would limit access to large energy companies, effectively shutting out small businesses, or add to the considerable economic and financial uncertainties associated with the developing industry, rendering it very difficult to finance projects. Others supported using a competitive basis for awarding permits for resource and site assessment with an ''option to lease'' or other guaranteed development rights provided that site-specific requirements were met. Others felt that given the emerging nature of offshore renewable energy technologies and the public and private benefits that could be derived from energy resources development on the OCS, MMS should make the process as simple and efficient as possible with a clear schedule for processing and decision-making. The proposed rule lays out the steps in the processes for acquiring leases, both competitively and noncompetitively.

Some commenters suggested that competing projects or proposals be evaluated using quantitative factors such as financial strength, experience and operational performance of the developers. However, there was considerable support for using criteria that would allow small and medium size businesses, local communities, and local utility districts the opportunity to initiate projects. It was also suggested that proposals be evaluated on the basis of how each best serves the public interest.

Environmental Information, Management, and Compliance Programs

Comments fell into two broad points of view: (1) Require detailed studies years prior to building a project or (2) waive or reduce environmental requirements and other safeguards that are incorporated into our normal permitting processes.

While most comments suggested that MMS should prepare a PEIS as a first step, comments were divided as to how MMS should use the document. Some suggested that the PEIS identify areas open for renewable development, either advocating that certain areas be excluded from leasing/permitting or matching the type of renewable energy development with a particular area. The thought behind this approach is that by strategically reviewing ''preferred'' locations for renewable development, the PEIS could reduce the residual project risk that project developers face, help to ensure State and community input on identifying more or less desirable locations, and ensure that impacts remain acceptable. Some

commenters disagreed with this approach, recommending that access remain flexible to allow renewable energy developers to select potential areas and citing the concern that any areas deferred at this stage may be permanently excluded from future development. Others stated that the PEIS should identify and analyze programmatic issues leaving specific environmental evaluation to the project stage.

MMS prepared a PEIS for the Alternative Energy and Alternate Use Program. The PEIS provides a basic understanding of the possible impacts of various types of alternative energy and alternate use projects. However, MMS will develop additional, site specific EISs as appropriate.

Some comments raised the issue of responsibility for preliminary site-specific studies. It was suggested that MMS should conduct these studies to maintain objectivity. Other commenters stated that conducting these studies is the responsibility of the applicant working with MMS and potential affected State(s) on study design. Another recommendation advocated using independent third-party contractors selected pursuant to the Council on Environmental Quality procedures to ensure unbiased environmental assessments.

In the ANPR we requested specific comments on types and levels of environmental information that MMS should require for alternative energy and alternate use projects; the types of site-specific studies should MMS require; when these studies should be conducted; and who should be responsible for conducting these studies. We also requested input on identifying design and installation requirements associated with new projects and modification of existing facilities and identifying technology assessment and research needs. Commenters consistently supported the development of a Programmatic EIS, followed by project specific EIS. They also were consistent about requiring compliance with CZMA and developing an approach that respects local and State laws and requirements. The MMS developed a PEIS, as suggested, as was discussed previously. Each individual project will require NEPA compliance. In the near term we anticipate the NEPA compliance for development will be project specific EIS. These regulations would require that the applicant provide the information needed for MMS to develop the NEPA document. In addition, these regulations detail CZMA compliance requirements.

Generally, commenters agreed that MMS should conduct and pay for the PEIS, but the applicant should pay for site-specific NEPA. However, some commenters stated that it should be the agency's responsibility to gather and provide information for the project-specific NEPA and to meet other requirements. Others suggested that MMS can get most of the required data from other Federal government agencies including: Department of Energy (DOE), Bureau of Land Management (BLM), and Army Corps of Engineers (ACOE).

Commenters consistently mentioned that offshore alternative energy engineering issues are similar to those issued faced by the offshore oil and gas industry and the MMS should use its experience with oil and gas when evaluating the engineering aspects of these projects.

Some commenters suggested that MMS use the existing oil and gas regulations (30 CFR part 250) for the plan requirements. We reviewed and considered the oil and gas regulations and patterned many of these roles on those basic requirements if they were appropriate for the alternative energy program.

Commenters reminded us to recognize that specific data requirements will vary by the type of project and the location. We addressed this by not including standards in these regulations. Instead we are requiring applicants to submit the project design and the data and information that were the basis for the design, so we can evaluate each project on a case-by-case basis. As we gain experience with offshore alternative energy, we may set more specific project requirements. A number of commenters suggested that the responsibility for determining engineering requirements for offshore alternative energy projects should fall on project developers. Some commenters stated that these projects should meet the same engineering criteria as oil and gas facilities. However, others felt that the consequences of an incident would likely not be as great as an incident with an oil and gas facility, therefore these structures need not meet the same criteria as do those for oil and gas.

As with environmental impacts, many commenters believed that, at this time, it would be best to address the engineering requirements of these projects on a case-by-case basis, instead of detailing requirements in the regulations. The requirements of these projects would vary based on location (sea conditions, water depth, anticipated weather events) and type of project. Research and development and or demonstration projects are smaller scale activities that take place for a short duration and in a limited, discrete area.

Some commenters included suggestions for the type of data and information MMS should require, both for environment and engineering assessments. However few provided details on the design standards for projects. Those that provided details suggested the use of various standards that have already been developed, such as those used in Europe.

Regulation of Operational Activities

A common message from the commenters was that MMS should recognize that renewable energy is a young industry so our regulatory approach for operations should remain flexible yet predictable. Comments recommended that the OCS oil and gas program should be used as the model for addressing renewable energy operational activities. Comments suggested MMS require operators to submit plans similar to the Deep Water Operations Plan, use Certified Verification Agents, adopt Occupational Safety and Health Administration requirements as a basis for ensuring safety, schedule frequent inspections, and assess penalties for noncompliance. Adaptive management approach and use of pilot projects to study operations were also recommended. There were several suggestions that MMS set production requirements to ensure due diligence of the operators, while others wanted us to be flexible early on or have no production requirements.

Payments, Royalties, Fees and Bonds

Issues with payments and revenues generated a great deal of discussion with most comments against using bonus bids as part of the competitive lease issuance process but supportive of rentals and royalties. Some respondents requested a payment honeymoon or holiday until it is determined that OCS renewable activities are profitable or the industry matures. Commenters requested an orderly, simple, and predictable financial system where potential investors are certain of government fees. Many respondents stated that renewable wind, wave and current resources are not finite like extractable oil and gas hydrocarbons, there is no removal of a public resource and alternative energy operations only use a limited amount of public OCS lands; therefore, we should either not charge a royalty or set a low fee, especially on pilot projects. Supporters of renewable energy expressed concern that if the government's financial regimen were onerous it would discourage development and give large

energy companies an unfair advantage. Citing the benefits of renewable energy, most comments supported a financial system structured in a manner which stimulates growth of offshore renewable generation and provides incentive for developers to invest in OCS projects with the hope that it will achieve cost competitiveness with other energy sources. One Federal agency commenter stated that the perception of fairness and cooperation is important and opponents of offshore alternative energy development may claim that wind power facilities are unfairly using public commons for profit. MMS has considered all comments on an OCS alternative energy financial system and we propose a financial regime that we have determined is fair to the American public, meets Congress' and the Administration's intent with respect to EPAct and will permit development of offshore alternative energy.

Bonus

Even though most respondents wrote against a system of lease bonuses, EPAct requires competition and MMS is proposing the cash bonus as either a bid variable or a fixed element in the alternative energy leasing regulations. In certain cases where multiple expressions of interest are received, MMS is proposing to use the cash bonus bidding system as the basis for determining the winning bidder. Where no competitive interest exists, a marginal acquisition fee is proposed.

Rentals

There was generally strong support for using rentals in any OCS alternative energy leasing financial system. Respondents differed on the rate of rentals that should be charged and the method for calculating rental acreage. A few commenters felt that no rental fee should be collected or rental waived until production commenced. Some commenters proposed rental payments only be collected on the seabed footprint while others suggested following the Federal oil and gas model where rentals are paid on the entire OCS leased acreage. MMS is proposing that a rental fee be collected on the entire leased acreage with rental rates of $3 to $5 per acre for commercial leases, project easements and rights-of-way. This rate is below the current prevailing rates for oil and gas leases. We propose lower rental rates because during the initial lease period and before the approval of the Construction and Operations Plan (COP), there is no permanent disturbance of the OCS. Following approval of the COP, a royalty-based operating fee is proposed. Additionally, unlike oil and gas projects, alternative energy projects do not extract a non-renewable energy source from the leased tract. Thus, the underlying value of the project's acreage is less affected by an alternative energy project than it would be for an oil and gas project, so the rental charge for use of the land can be set appropriately lower for alternative energy projects.

Royalties

Most respondents supported some element of royalties based on gross revenue. Comments about royalties covered the full spectrum from setting no royalties; very low royalties (3% royalty that BLM charges); to a phased royalty system designed so that the financial terms would facilitate the emergence of a viable industry. A three-phased example might include a pilot phase with no royalty and minimal rental fees, followed by an industry ''wildcatter'' development phase with higher rental rates and royalties after 5 years. The third is a commercial phase in which a mature industry is paying yet higher rental and royalty rates. Unless otherwise specified in the Final Sale Notice, MMS is proposing a royalty regime in which an *operating fee rate would apply at a rate of one percent in the first two years* following approval of the Construction and Operations Plan on commercial alternative energy leases, and at two percent thereafter. The *operating fee* would be an annual payment that continues through the duration of the operations term of a commercial lease. Where competition exists for a lease, MMS may offer bidders the opportunity to bid a constant or sliding operating fee rate above 2 percent subject to a fixed cash bonus. The sliding scale operating fee rate could depend on one or more of the variables which compose the operating fee itself, or on some other variables, such as time. In this auction format, MMS would provide a baseline sliding scale function, and the operating fee rate bid variable would be some multiplier of that function. MMS does not expect royalties at this level to deter investment in a meaningful number of otherwise, prospective alternative energy projects.

A limited number of comments were received related to alternative energy research, testing and pilot projects. These comments stated that lease fees should be waived for research facilities and some pilot projects that are limited in scope and intended for testing, development or experimental evaluation of new systems. MMS has proposed a ''limited lease'' with a restricted term of five years and minimal rental for these types of projects.

There were divergent views on what constituted ''fair return.'' Some wanted us to include the benefits of renewable energy as part of fair return, while others supported requiring additional compensation for lost uses and social costs. Most commenters strongly rejected opportunity-cost based valuation because of the complex and burdensome nature of subjective value-based judgments required to determine appropriate payment levels. Some respondents stated that only a small proportion of the sea bottom and surface will be displaced and that current users can adjust to any new structures. Some pointed out that if Congress intended that such costs should be addressed, they would have stated so in the EPAct language. On the other hand, two commenters proposed to base a portion of the financial regimen on interference with other uses by charging for the use of the sea floor in compensation for displacing the pelagic zone and the atmosphere above the water surface. MMS is not aware of precedents in other Federal or State statutes that support an opportunity-cost based approach. Moreover, it is not required by the authorizing legislation. At the same time, MMS does consider selected aspects of opportunity cost in some of its bid adequacy assessments for oil and gas leases. Accordingly, while MMS does not intend to rely heavily on an opportunity cost framework, for either setting payment sizes or for bid adequacy purposes, there may be some circumstances in which consideration of selected aspects of opportunity cost would be appropriate for helping to set the sizes of certain fees, minimum bids, or reservation prices.

A single commenter pointed out that since Congress already subsidizes the development of alternative sources of energy through production tax credits, MMS lacks the prerogative to encourage development offshore through favorable financial terms. This commenter also stated that MMS should not reduce the charge below the true economic value of the resource. If MMS were to encourage development of a resource with financial terms below those that private landowners would be anticipated to charge, development could occur too quickly and early developers might not make the best use of emerging technologies.

MMS has considered this reasoning in our proposal for the authorized financial terms and durations of the lease and grant periods. If future economics of alternative energy technology on the OCS support different or improved

technologies, the flexibility which MMS has built into these regulations will allow for appropriate specification of lease terms and conditions upon subsequent renewals or in new offerings. Moreover, MMS is confident that the actual financial terms and length of lease conditions that it will apply, in conjunction with a myriad of other administrative and regulatory requirements, strike the proper balance between ensuring receipt of a fair return and providing the proper inducement for alternative energy activities to proceed at the proper pace.

There were differing opinions about charging cost recovery fees for processing of applicant initiated actions. Most respondents felt that cost recovery fees for MMS program efforts is appropriate, with some advocating management costs be recovered from permit applicants through fees, royalties, and/or a combination of both. Others expressed concerns that charging cost recovery fees would impact the economics of the projects and discourage development. To clarify, rentals and royalties are designed to compensate the American public for use of the Federal OCS, while cost recovery fees are to be implemented by a Federal agency when a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public. The MMS is proposing case-by-case fees to recover unique processing costs such as the preparation of Environmental Impact Statements. We do not have data for our costs of processing lease applications for this new program, so we are not otherwise proposing processing fees in this rule. As the program matures, and we acquire processing cost data, we expect to propose fees to recover our costs of processing. While we have not included filing fees in this proposed rule, in the final rule, we may add nominal filing fees for competitive and noncompetitive lease applications, and for applications for ROWs and RUEs, to aid in limiting filings to serious applicants.

Comments generally supported MMS using a surety bond or other type of security to cover the costs associated with non-compliance of lease terms; lease default; decommissioning and removing wind turbines and towers at the end of the lease term; and appropriate site remediation at the end of the lease term. Respondents acknowledged that companies operating on the OCS should be able to demonstrate appropriate levels of financial capability. The types of financial securities mentioned included letters of credit, a test of credit-worthiness, assigned interest bearing annuity, funding a trust (comparable to a nuclear decommissioning trust), escrow, insurance policy, or corporate guarantee. MMS is proposing minimum financial assurance requirements of $300,000 for the holder of any lease with actual surety levels to be determined by MMS based on the complexity, number and location of all planned OCS facilities by the lessee. We feel that this financial assurance requirement will protect the taxpayer from any default by a lessee.

The ANPR did not address revenue sharing with States.

Coordination and Consultation

Commenters encouraged MMS to coordinate and consult with affected government agencies and stakeholders, and viewed the ANPR and the MMS webpage on renewable energy as solid first efforts. Most comments suggested consultation early in the process, both in the program development and for individual projects. Other comments suggested: allowing the States to ban renewable projects sited adjacent to state waters that have negative environmental, economic, or public safety impacts; conducting targeted surveys of coastal states and the industry to identify potential concerns and objections; providing an opportunity to identify areas of the OCS to include in the program; working with Federal and State cooperatives; and requiring developers to include outreach programs in their application. Many comments supported the use of existing offshore program coordination mechanisms and suggested expanding the OCS Policy Committee membership to include representatives from the offshore renewable energy industry and affected coastal states. Some comments expressed concern that the coordination and consultation process would create burdensome requirements, slow down the application review process, and/or create artificial conflicts by giving too much visibility to marginal groups/perspectives.

One commenter suggested that MMS establish a Joint Ocean Renewables Office, co-locating representatives from each of the agencies responsible for permitting and authorizing portions of the alternative ocean energy projects, while another suggested that it was too early, given the infancy of the offshore renewable energy industry, to rigidly structure the relationships between regulators and project developers. Other comments called for MMS to create a ''one-stop shop'' for the permitting process, in which MMS would coordinate with other agencies and be the primary point of contact for the industry.

Use of Existing Facilities

A few comments covered issues associated with use of existing facilities, with the majority focusing on liability, environmental impacts, and implementation of a rigs-to-reef program. Comments generally supported leaving facilities in place, at the end of life, for offshore aquaculture or to serve as artificial reefs. Concerns were submitted that removing facilities would destroy essential fish habitats. Some commenters wanted liability to be the responsibility of the original owners (usually oil and gas operations), while others wanted to allow for the shedding of liability by an oil and gas producer if an alternative use of existing infrastructure is approved. MMS is proposing to require an allocation of responsibilities between the existing lessee and facility owner (e.g., the oil and gas lessee and/or operator) and the holder of the Alternate Use RUE.

Programmatic Environmental Impact Statement Summary

The MMS prepared a final PEIS in support of the establishment of a program for authorizing alternative energy and alternate use activities on the OCS. The final PEIS examines the potential environmental effects of the program on the OCS and identifies policies and best management practices that may be adopted for the program. The PEIS examined three alternatives as well as the no action alternative. The three alternatives were: (1) The proposed action which would establish the program; (2) a case-by-case alternative that would evaluate each project individually without the benefit of a comprehensive program and; (3) the preferred alternative, which consisted of a combination of the first two alternatives, allowing MMS to review projects during the interim while the program and regulations are being established.

Given the rapidly evolving nature of this nascent industry, the MMS cannot reasonably anticipate and assess the potential environmental impacts of all of the various technologies and potential OCS locations where these alternative energy and alternate use projects could someday be proposed. Accordingly, this PEIS is focused on alternative energy technologies and areas on the OCS that industry has expressed a potential interest in and ability to develop or evaluate from 2007 to 2014. The PEIS proposed policies and best management practices based on the analyses in the PEIS. As the program

evolves and more is learned, the mitigation measures may be modified or new measures developed. Each project developed under this new program will be subject to environmental reviews under the National Environmental Policy Act (NEPA), and each project may have additional project-specific mitigation measures.

A Record of Decision (ROD) was published on January 10, 2008. The preferred alternative was selected as well as interim policies and best management practices that were recommended in the PEIS. The PEIS and ROD are available at: *ocsenergy.anl.gov.* A Draft Environmental Assessment of the regulations, which tiers off the PEIS, is being released for review and comment along with the proposed rules.

Overview of the MMS Alternative Energy and Alternate Use Program

To accommodate the regulations to support the Alternative Energy and Alternate Use Program, MMS is proposing to add a new part to subchapter B of title 30 of the CFR. The new part 285 would be titled ''Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf'' and would address the requirements of section 388(a) of the EPAct, which amended the OCS Lands Act to add section 8(p).

Approach to Rulemaking

These regulations were developed to provide a regulatory framework for leasing and managing OCS alternative energy project activities and authorizing activities that involve the alternate use of OCS Lands Act-permitted facilities. These regulations are also intended to encourage orderly, safe, and environmentally responsible development of alternative energy sources on the Outer Continental Shelf. The MMS expects that alternative energy projects in the near term will involve the production of electricity from wind, wave, and ocean current. In the future, other types of alternative energy projects may be pursued on the OCS, including solar energy and hydrogen production projects. These regulations were developed to allow for a broad spectrum of alternative energy development, without specific requirements for each type of energy production. However, as we gain experience with alternative energy development on the OCS, we may update our regulations to include energy resource-specific provisions and incorporate by reference appropriate documents.

This proposed rule (30 CFR part 285) applies to all aspects of the alternative energy and alternate use program; except for the procedures applying to appeals of MMS decisions or orders, which are covered in 30 CFR part 290, Subpart A. We are also proposing to revise 30 CFR part 290.2 to clarify the MMS decisions on bids under this program are exempt from the appeals process at 30 CFR part 290 and covered under § 285.118(c). This section describes the procedures for an unsuccessful bidder to apply for reconsideration by the Director for alternative energy leases, Right-of-way (ROW) grants, rights-of-use and easement (RUE) grants, or alternate use rights-of-use and easements (Alternate Use RUE).

Overview of the Project Development Process

General Overview

Figure 1 depicts the general process that the MMS proposes for managing OCS alternative energy program activities under the proposed rule.

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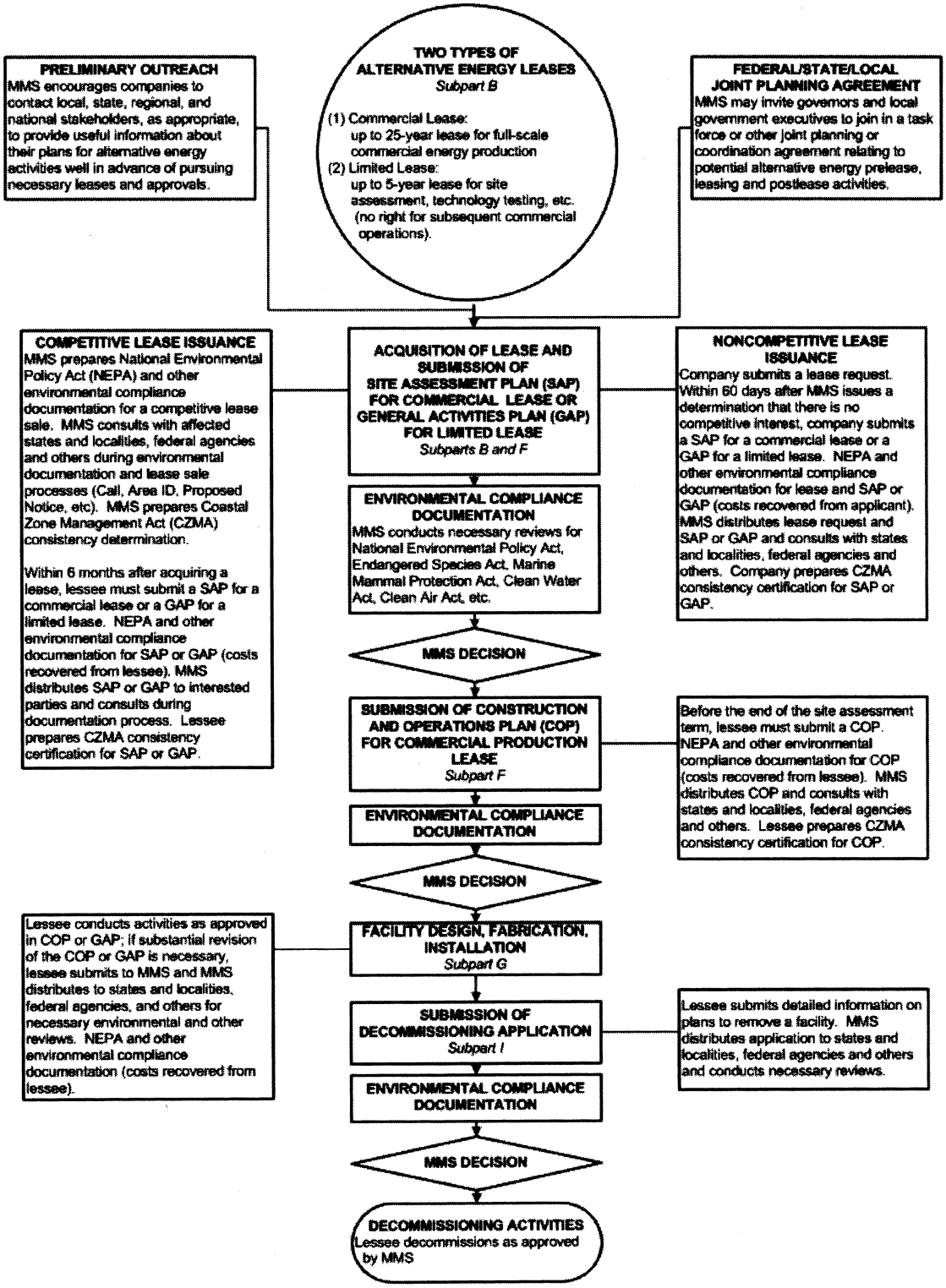
Figure 1. PROPOSED OCS ALTERNATIVE ENERGY PROCESS FOR LEASES



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Types of Access Rights

MMS will issue lease access rights for commercial development and site assessment and technology testing. ROW grant and RUE grants will be issued for the support of alternative energy activities. MMS will use a special grant, the Alternate Use RUE, for activities that use an existing facility.

Commercial and Limited Leases

The MMS would issue two types of leases: (1) Commercial or (2) limited. A Commercial lease would convey the access and operational rights necessary to produce, sell, and deliver power on a commercial scale, through spot market transactions or a long-term power purchase agreement. A commercial lease provides the lessee full rights to apply for and receive the authorizations needed to assess, test, and produce

alternative energy on a commercial scale over the long term (approximately 30 years). A commercial lease would include the right to a project easement, which would be issued to allow the lessee to install gathering, transmission and distribution cables, to transmit electricity; pipelines to transport other energy products (i.e. hydrogen); and appurtenances on the OCS as necessary for the full enjoyment of the lease. The project easement would be issued upon approval of the Construction and Operations Plan (for Commercial Leases) or General Activities Plan (for Limited Leases).

A limited lease would convey access and operational rights for activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use. This would include leases issued for site assessment or to develop and test new alternative energy technology. Limited leases would be issued for a short term, 5 years. Under the provisions of these regulations limited leases could be renewed, but they cannot be converted to commercial leases. If the holder of a limited lease wished to pursue commercial development on the OCS, it would need to obtain a new commercial lease through the leasing process, as defined in these regulations.

RUE Grants and ROW Grants

Right-of-use and Easement (RUE) grants would be issued by MMS to authorize the use of a designated portion of the OCS to support alternative energy activities on a lease or other approval not issued under this part, e.g. on a State issued lease.

Right-of-way (ROW) grants would be issued by MMS to allow for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing or otherwise transporting electricity or other energy product generated or produced from alternative energy not generated on a lease issued under this part. A ROW grant could be used to transport electricity from a State lease to shore or from one state to another state through a transmission line that must cross the Federal OCS. A ROW is not the same as a project easement issued with an alternative energy lease under this part.

Alternate Use RUEs

MMS would issue an alternative use RUE for the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law.

Obtaining Access Rights

The EPAct requires MMS to award leases, ROW grants and RUE grants competitively, unless we make a determination of no competitive interest. In conjunction with the competitive leasing process, MMS would prepare NEPA and other environmental compliance documents. The MMS would put forth a call for interest, designate the lease or grant area, and publish in the **Federal Register** all other notices and calls relating to the sale. If, after putting forth a call for interest, MMS determines that there is no competitive interest in that particular OCS area, MMS may proceed in issuing a lease or grant noncompetitively. Whether a company acquires a lease or grant competitively or non-competitively it must comply with all MMS lease stipulations or conditions in the grant. The steps in the competitive leasing process are shown in Figure 2.

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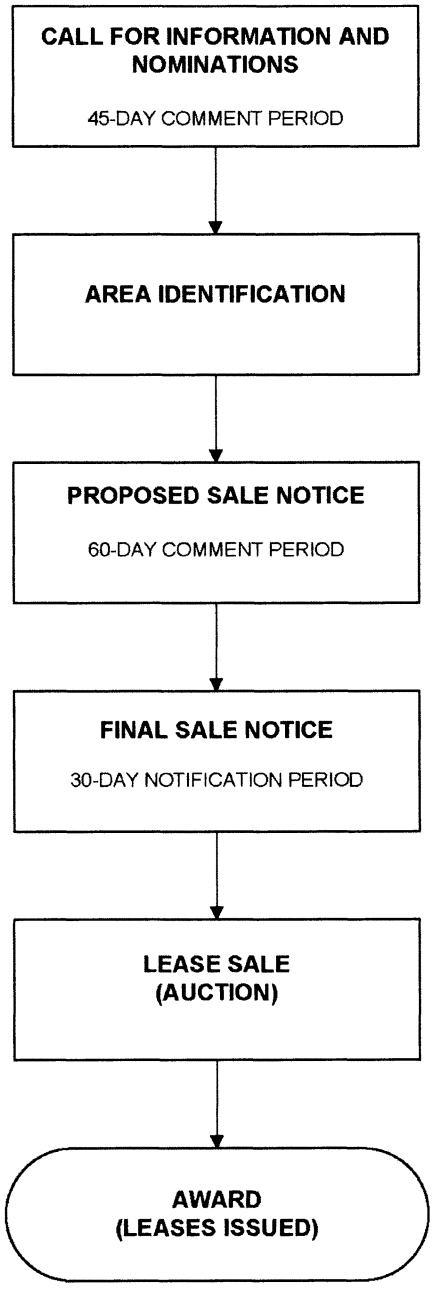
Figure 2: Steps in the Proposed OCS Alternative Energy Competitive Leasing Process



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Federal Compliance for the Leasing Process

All activities permitted under this part must comply with all relevant Federal laws, regulations, and statutes, including, but not limited to the following:

Responsible Federal agency/agencies	Statute/Executive Order	Summary of pertinent provisions
Council on Environmental Quality (CEQ).	National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*).	Requires Federal agencies to prepare an EIS to evaluate the potential environmental impacts of any proposed major Federal action that would significantly affect the quality of the human environment, and to consider alternatives to such proposed actions.

Responsible Federal agency/agencies	Statute/Executive Order	Summary of pertinent provisions
U.S. Fish and Wildlife Service (USFWS); National Oceanic and Atmospheric Administration (NOAA); National Marine Fisheries Service (NMFS).	Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).	Requires Federal agencies to consult with the USFWS and the NMFS to ensure that proposed Federal actions are not likely to jeopardize the continued existence of any species listed at the Federal level as endangered or threatened, or result in the destruction or adverse modification of critical habitat designated for such species.
USFWS (walruses; sea and marine otters; polar bears; manatees and dugongs); NMFS (seals, sea lions, whales, dolphins, and porpoises).	Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407).	Prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States.
NMFS	Magnuson-Stevens Fishery Conservation and Management Act (also known as the Fishery Conservation and Management Act of 1976, as amended by the Sustainable Fisheries Act) (16 U.S.C. 1801 *et seq.*).	Requires Federal agencies to consult with the NMFS on proposed Federal actions that may adversely affect Essential Fish Habitats that are necessary for spawning, breeding, feeding, or growth to maturity of federally managed fisheries.
U.S. Environmental Protection Agency (USEPA); U.S. Army Corps of Engineers (USACE); NOAA.	Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended (33 U.S.C. 1401 *et seq.*).	Prohibits, with certain exceptions, the dumping or transportation for dumping of materials, including, but not limited to, dredged material, solid waste, garbage, sewage, sewage sludge, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and other waste into ocean waters without a permit from the USEPA. In the case of ocean dumping of dredged material, the USACE is given permitting authority.
NOAA	National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*).	Prohibits the destruction, loss of, or injury to, any sanctuary resource managed under the law or permit and requires Federal agency consultation on Federal agency actions, internal or external to national marine sanctuaries, that are likely to destroy, injure, or cause the loss of any sanctuary resource.
USFWS	Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712); Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds'' (January 10, 2001).	Requires that Federal agencies taking actions likely to negatively affect migratory bird populations enter into Memoranda of Understanding with the USFWS, which, among other things, ensure that environmental reviews mandated by NEPA evaluate the effects of agency actions on migratory birds, with emphasis on species of concern.
NOAA's Office of Ocean and Coastal Resource Management (NOAA OCRM).	Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).	Specifies that coastal States may protect coastal resources and manage coastal development. A State with a coastal zone management program approved by NOAA OCRM can deny or restrict development off its coast, if the reasonably foreseeable effects of such development would be inconsistent with the State's coastal zone management program.
USEPA; MMS	Clean Air Act, as amended (CAA) (42 U.S.C. 7401 *et seq.*).	Prohibits Federal agencies from providing financial assistance for, or issuing a license or other approval to, any activity that does not conform to an applicable, approved implementation plan for achieving and maintaining the National Ambient Air Quality Standards (NAAQS).
		Requires USEPA (or an authorized State agency) to issue a permit before construction of any new major stationary source or major modification of a stationary source of air pollution. The permit—called a Prevention of Significant Deterioration (PSD) permit for stationary sources located in areas that comply with NAAQS and a Nonattainment Area Permit in areas that do not comply with NAAQS—must control emissions in the manner prescribed by USEPA regulations to either prevent significant deterioration of air quality (in attainment areas), or contribute to reducing ambient air pollution in accordance with an approved implementation plan (in nonattainment areas).
		Requires the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process to submit a Risk Management Plan to USEPA.
		In the western portion of the Gulf of Mexico, MMS has authority pursuant to the OCS Lands Act for clean air regulations.
USEPA; U.S. Coast Guard (USCG); MMS.	Clean Water Act (CWA), Section 311, as amended (33 U.S.C. 1321); Executive Order 12777, ''Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990''.	Prohibits discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the OCS Lands Act, or which may affect natural resources belonging to the U.S.

Responsible Federal agency/agencies	Statute/Executive Order	Summary of pertinent provisions
	.....	Authorizes USEPA and the USCG to establish programs for preventing and containing discharges of oil and hazardous substances from non-transportation-related facilities and transportation-related facilities, respectively.
	.....	Directs the Secretary of the Interior (MMS) to establish requirements for preventing and containing discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports.
USEPA	CWA, Sections 402 and 403, as amended (33 U.S.C. 1342 and 1343).	Requires a National Pollutant Discharge Elimination System (NPDES) permit from USEPA (or an authorized State) before discharging any pollutant into territorial waters, the contiguous zone, or the ocean from an industrial point source, a publicly owned treatment works, or a point source composed entirely of storm water.
USACE; USEPA	CWA, Section 404, as amended (33 U.S.C. 1344).	Requires a permit from the USACE before discharging dredged or fill material into waters of the United States, including wetlands.
USCG	Ports and Waterways Safety Act, as amended (33 U.S.C. 1221 *et seq.*).	Authorizes the USCG to implement, in waters subject to the jurisdiction of the U.S., measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment. Such measures may include but are not limited to: Reporting and operating requirements, surveillance and communications systems, routing systems, and fairways.
USACE	Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 *et seq.*).	Section 10 (33 U.S.C. 403) delegates to the USACE the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the U.S. The OCS Lands Act extends the jurisdiction of the USACE, under Section 10 to the seaward limit of Federal jurisdiction.
USEPA	Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA) (42 U.S.C. 6901 *et seq.*).	Requires waste generators to determine whether they generate hazardous waste, and if so, to determine how much hazardous waste they generate and notify the responsible regulatory agency.
	.....	Requires hazardous waste treatment, storage, and disposal facilities (TSDFs) to demonstrate in their permit applications that design and operating standards established by the USEPA (or an authorized State) will be met.
	.....	Requires hazardous waste TSDFs to obtain permits.
National Park Service (NPS); Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer.	National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470t); Archaeological and Historical Preservation Act of 1974 (16 U.S.C. 469–469c–2).	Requires each Federal agency to consult with the Advisory Council on Historic Preservation and the State or Tribal Historic Preservation Officer before allowing a federally licensed activity to proceed in an area where cultural or historic resources might be located; authorizes Interior Secretary to undertake salvage of archaeological data that may be lost due to a Federal project.
NPS; Advisory Council on Historic Preservation; State or.	American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); Executive Order 13007, ''Indian Sacred Sites''(May 24, 1996).	Requires Federal agencies to facilitate Native American access to and ceremonial use of sacred sites on Federal lands, to promote greater protection for the physical integrity of such sites, and to maintain the confidentiality of such sites, where appropriate.
Federal Aviation Administration (FAA).	Federal Aviation Act of 1958 (49 U.S.C. 44718); 14 CFR 77.	Requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the FAA as necessary to promote safety in air commerce and the efficient use and preservation of the navigable airspace.

National Environmental Policy Act Compliance

The NEPA process helps public officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. It provides the tools to carry out these goals by mandating that every Federal agency prepare an in-depth study of the impacts of ''major federal actions significantly affecting the quality of the human environment'' and alternatives to those actions, and requiring that each agency make that information an integral part of its decisions. NEPA also requires that agencies make a diligent effort to involve the interested and affected public before they make decisions affecting the environment.

The MMS is the lead Federal agency for NEPA compliance for alternative energy and alternate use activities on the OCS. Some of the information MMS requests under this part is in support of other Federal agencies information requirements associated with compliance with the laws and regulations that they enforce.

Coastal Zone Management Act (CZMA) Compliance

Each coastal state has a Federally-approved coastal management plan (CMP). In compliance with CZMA mandates found at section 307(c)(1), when the MMS conducts a competitive lease sale for leases or grants under this part, MMS will determine if the sale activity is reasonably likely to affect any land or water use of natural resource of a State's coastal zone. If such effects are reasonably foreseeable, the MMS must submit a consistency determination to the affected State(s) at least 90 days before the lease sale. This CD will include a detailed description of the

proposed activity, its expected coastal effects, and an evaluation of how the proposed activity is consistent with applicable enforceable policies in the State's CMP. If the affected State(s) agree with MMS' determination, MMS may proceed with the competitive sale. If the affected State(s) disagree, MMS will follow the procedures as outlined in 15 CFR part 930, subpart C.

In the CMP, the States list Federal licenses and permits which are reasonably likely to affect coastal uses or resources and require a Federal consistency review. Listed activities must be conducted in a manner that is consistent with the enforceable policies of the State's CMP and the applicant must submit a Federal consistency certification to the State and approving Federal agency. Also, the State may ask the Ocean and Coastal Resource Management office within the National Oceanic and Atmospheric Administration (NOAA) for permission to review, for consistency, activities that are not listed in its CMP. If NOAA approves the request, the applicant is required to submit a consistency certification for the unlisted Federal license/permit. In compliance with CZMA mandates, the MMS would not issue noncompetitive leases or approve noncompetitive grants or plans under this part, if: (1) Consistency has not been conclusively presumed, or (2) the State objects to the applicant's consistency certification and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. Table 1 summarizes the NEPA and CZMA compliance requirements for leases and grants.

TABLE 1

Activity	MMS process	NEPA documentation	Lease or grant conditions	CZMA
Leases				
Competitive lease sale	Conduct competitive lease sale and issue leases.	Covers lease sale area	Stipulations, mitigation, and conditions established in lease contract.	A Federal agency activity and must comply with 15 CFR part 930 subpart C
Non-competitive lease	Negotiate noncompetitive lease and issue decision on the Site Assessment Plan or General Activities Plan.	Covers identified non-competitive lease area and proposed activities in the Site Assessment Plan or General Activities Plan.	Stipulations, conditions, mitigation, and monitoring established in lease and Site Assessment Plan or General Activities Plan.	Non-Federal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D
Grants				
Competitive ROW grants and RUE grants.	Conduct competitive ROW grant or RUE grant sale and issue grants.	Covers ROW grant and RUE grant-specific sale area.	Stipulations and conditions established in grant award.	A Federal agency activity and must comply with 15 CFR part 930 subpart C
Non-competitive ROW grants and RUE grants.	Negotiate noncompetitive ROW grants or RUE grants and evaluate General Activities Plan.	Covers identified non-competitive grant site and proposed activities in the General Activities Plan.	Stipulations, conditions, mitigation, and monitoring established in grant award and General Activities Plan.	Non-Federal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D

Development Process

Developing Leases and Grants

Once a company acquires a lease, ROW grant, or RUE grant, it must submit certain plans to MMS for development of the lease or grant. The various plans serve as a blueprint for site development, construction, operations, and decommissioning. The MMS has specific requirements for each phase of your lease, grant, and plan. The MMS will not allow development without proper plan submission and approval. Site assessment activities on a commercial lease would require the applicant to submit a Site Assessment Plan (SAP) and receive MMS approval of that plan before beginning those activities. The SAP would undergo the appropriate NEPA reviews and may require either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). The SAP must demonstrate how you will conduct the proposed activities to comply with relevant Federal statutes such as the Coastal Zone Management Act (CZMA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and Clean Water Act (CWA).

For a commercial lease, after you perform site assessment activities, you would be required to submit and receive MMS approval of a Construction and Operations Plan (COP) before you may begin any development and production activities on your lease. Like the SAP, the COP would undergo the appropriate NEPA reviews and may require either an EIS or an EA. Like the SAP, the COP must also comply with relevant Federal statutes.

For limited leases, ROW grants, and RUE grants, you would be required to submit a General Activities Plan (GAP), which covers all activities on the lease or the grant including site assessment, development, operations, and decommissioning. Like the SAP and COP, the GAP would undergo the appropriate NEPA reviews and must comply with relevant Federal Statutes.

Revenue Sharing

The new subsection 8(p)(2)(B) of the OCS Lands Act (43 U.S.C. 1337(p)(2)(B)) requires payment to certain coastal States of 27 percent of the revenues received by the Federal Government from any projects under this section that are located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. (For ease of description, this 3-mile-wide area adjoining State submerged lands will be referred to in this preamble as the ''8(g) zone,'' a term widely used to refer to the identical 3-mile area described in section 8(g) of the OCS Lands Act. (43 U.S.C. 1337(g)) In addition, when a project extends into

the 8(g) zone of at least one State, subsection extends eligibility for a share of the revenues to any other State with a coastline that is located within 15 miles of the geographic center of the project. The Secretary is required to establish a formula by rulemaking that provides for the equitable distribution of payments to eligible States based on the proximity of each State's coastline to the geographic center of the project.

Operations

The regulations that address operations cover environmental management, safety management, inspections, facility assessments, and decommissioning. The regulations on operations are designed to prevent or minimize the likelihood of harm or damage to the marine and coastal environments. The structure of the regulations is based on adaptive management. The operator would be required to monitor activities and demonstrate that its performance satisfies specified standards in its approved plans. In addition, the operator would be required to comply with regulations regarding air quality, safety, maintenance and shutdowns, equipment failure, adverse environmental affects, inspections, facility assessments, and incident reporting.

Alternate Use of Existing Facilities

These regulations establish general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This includes general provisions that explain how MMS will approve and regulate such alternate use activities on the OCS. We are proposing to authorize such activities through the issuance of an Alternate Use RUE.

These regulations explain how applicants can request an Alternate Use RUE; how MMS will decide whether to issue Alternate Use RUEs; how Alternate Use RUEs will be competitively issued (if MMS determines that competitive interest exists); the terms of such authorizations; required payments to MMS; necessary financial assurance; other administrative issues such as assignment, suspension, and termination; and decommissioning of approved alternate use structures.

In addition to the proposed provisions in subpart J, MMS has proposed associated revisions to MMS's existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q, that clarify the oil and gas platform owner's obligations for decommissioning, in the event MMS approves alternate uses of the platform.

Subpart-by-Subpart Discussion

Part 285—Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

Subpart A—General Provisions
Subpart B—Issuance of OCS Alternative Energy Leases
Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative Energy Activities
Subpart D—Lease and Grant Administration
Subpart E—Payments and Financial Assurance Requirements
Subpart F—Plans and Information Requirements
Subpart G—Facility Design, Fabrication, and Installation
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments
Subpart I—Decommissioning
Subpart J—Rights of Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities

Subpart A—General Provisions

Overview

Subpart A establishes MMS's authority and the purpose for the regulations. It also addresses the general requirements that apply to all activities regulated under this part, for example, the qualifications for holding leases, ROW grants and RUE grants on the OCS and the appeals process. The definitions for these regulations are also in subpart A.

Other Options and Approaches

Most of the subjects addressed in subpart A are included to provide general information on these regulations to the applicants and operators. Some items are governed by other authorities, such as information collection requirements that are established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These are not issues that have a direct impact on the development of alternative energy resources or on alternate use of the OCS.

Selected Approaches

The EPAct requires MMS to ensure that the activities permitted under these regulations are carried out in a manner that provides for safety, protection of the environment, oversight, and enforcement (43 U.S.C. 1333(p)(4)). This subpart lays the foundation for these responsibilities. The responsibilities of the lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant were based on ensuring that projects under these regulations are designed and conducted in a safe and environmentally sound manner.

Departures from operating requirements were selected as a way of allowing MMS to maintain flexibility within the program and to be able to adapt to this new and changing industry. Requirements and qualifications for lessees and grant holders are based on section 8 of the OCS Lands Act. Appeal rights are based on those established for offshore oil and gas operations.

This subpart provides for participation of State and local governments in task forces or other joint planning agreements with MMS. The joint planning provision is modeled after section 281.13 of this subchapter, which pertains to task forces for considering leasing of minerals in the OCS other than oil, gas, and sulphur. We envision that such task forces could be useful and applicable to any phase of the OCS alternative energy program, from preliminary studies and lease sale formulation through site assessment and construction to decommissioning. We may invite any affected State Governor or local government executive to join in establishing a task force or other joint planning or coordination agreement if we are considering offering or issuing leases (or grants) under this part. Participation in a task force will give the parties opportunities to contribute to the planning process and access to nonproprietary information. The task force or other such arrangements will be constituted and conducted as agreed to by the participants consistent with Federal law and these regulations. The task forces may make recommendations and may be requested to conduct or oversee research, studies, or reports.

Comments

The MMS seeks comment on all items in subpart A. In general we wish to know if this subpart is informative, makes it easy to locate needed information, is easy to read and follow, and includes the appropriate topics.

Section by Section Discussion of Subpart A

Section 285.100 Authority

This section establishes MMS's authority to issue regulations and oversee access and development on the OCS for alternative energy and alternate use of existing facilities. The MMS includes the authority statement to inform the affected public and other interested parties of the basis for establishing these regulations. MMS's authority for these regulations comes from amendments to Subsection 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as set forth

in Section 388(a) of the Energy Policy Act of 2005 (Pub. Law 109–58).

Section 285.101 What is the purpose of this part?

This section describes MMS's objectives for this rule. Our objectives include: (1) Establishing procedures for issuance of leases, ROW grants, and RUE grants and administration of operations for activities permitted under this part; (2) informing applicants and third parties of their obligations under this part; and (3) ensuring that these activities are conducted in a safe and environmentally sound manner, in conformance with applicable laws and regulations, and the terms of the lease or grant. However, this part does not convey access rights for oil, gas, or other minerals.

Section 285.102 What are MMS's responsibilities under this part?

This section describes MMS's responsibilities, which are derived from Subsection 8(p)(4) of the OCS Lands Act, as amended by EPAct. These responsibilities include ensuring activities are carried out in a manner that provides for:

- Safety;
- Protection of the environment;
- Prevention of waste;
- Conservation of the natural resources of the OCS;
- Coordination with relevant Federal agencies;
- Protection of national security interests of the United States;
- Protection of the rights of other authorized users of the OCS;
- A fair return to the United States;
- Prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas;
- Consideration of the location of and any schedule relating to a lease or grant under this part for an area of the OCS, and any other use of the sea or seabed;
- Public notice and comment on any proposal submitted for a lease or grant under this part; and
- Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.

To enforce these responsibilities, MMS will require compliance with all applicable laws, regulations, other requirements, the terms of your lease or grant under this part, and approved plans. The MMS will also establish practices and procedures to govern the collection of all payments due to the Federal Government, including any cost recovery fees, rentals, operating fees, and other fees or payments. The MMS will coordinate and consult with the Governor of any affected State and executive of any affected local government. As part of coordination and consultation with State and local governments, MMS may invite any affected State Governor and affected local government executive to join a task force or other joint planning or coordination agreement.

Section 285.103 When may MMS prescribe or approve departures from the regulations governing operations?

This section establishes times when MMS may approve departures from the requirements established in the regulations. The MMS will consider a departure when it is needed to:

- Facilitate the proper development of a lease or grant under this part;
- Conserve natural resources;
- Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or
- Protect sites, structures, or objects of historical or archaeological significance.

A departure must be consistent with Subsection 8(p) of the Outer Continental Shelf Lands Act and must protect the environment and safety to the same degree as if there was no approved departure from the regulations.

Section 285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from an alternative energy resource on the OCS?

This section explains that except as otherwise authorized by law, it is unlawful for any person to construct, operate, or maintain any facility to produce, transport or support generation of electricity or other energy product derived from alternative energy resource on any part of the Outer Continental Shelf except under and in accordance with the terms of a lease, easement or right-of-way issued pursuant to the OCS Lands Act.

Section 285.105 What are my responsibilities under this part?

This section describes the general responsibilities of a lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant under these regulations. These responsibilities include:

- Designing projects and conducting operations in a safe manner and to minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable;
- Submitting requests, applications, plans, notices, modifications, and supplemental information as required by this part; following up any oral request or notification in writing within 3 business days;
- Complying with the terms and conditions of the applications, plans, notices, and modifications; making payments on time;
- Complying with the Department of the Interior's non-procurement debarment regulations; and including the requirement to comply with 43 CFR part 42 in all contracts and transactions related to a lease or grant under this part; and
- Responding to requests from the Director in a timely manner.

Section 285.106 Who can hold a lease or grant under this part?

This section details the qualifications of a lessee or grant holder. To qualify for a lease or grant you must be either a citizen or a national of the United States; an alien lawfully admitted for permanent residence in the United States; a private, public, or municipal corporation organized under the laws of the United States any of its States or territories, or the District of Columbia; or an association of any of the parties described previously. In addition, you may be excluded from becoming a lessee or grant holder if you are excluded or disqualified from participating in transactions covered by the Federal non-procurement debarment and suspension system, you have failed to meet or exercise due diligence under any OCS lease or grant, or you remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30-calendar days after MMS directed you to comply.

Section 285.107 How do I show that I am qualified to be a lessee or grant holder?

This section describes the evidence you must submit to MMS to establish qualification to hold a lease, ROW grant, or RUE grant. For an individual, this evidence includes documents that demonstrate citizenship or lawful admittance of permanent residence. For an association, the acceptable evidence includes a certified statement indicating the State in which it is registered and that it is authorized to hold leases and grants on the OCS, or appropriate reference to statements or records previously submitted to an MMS OCS office. Corporations must submit a statement certified by the corporate Secretary or Assistant Secretary over the corporate seal showing the State in

which it was incorporated, and that it is authorized to hold leases and grants on the OCS, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations), and evidence of the authority of persons signing to bind the corporation.

Section 285.108 When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt?

If any action is filed alleging that a company, operating under these regulations, is insolvent or bankrupt, the company must notify MMS within 3 days of learning of the action.

Section 285.109 When must I notify MMS of mergers, name changes, or changes of business form?

This section requires you to notify MMS of any merger, name change, or change of business form. This must be done no later than 120-calendar days after either the effective date or the date of filing the change or action with the Secretary of the State in the State of registry.

Section 285.110 Where do I submit plans, applications, or notifications required by this part?

You must send all plans, application, or notifications to MMS at the address provided in this section.

Section 285.111 When and how does MMS charge me processing fees on a case-by-case basis?

This section provides that MMS may charge processing fees for applications or requests filed under this part, on a case-by-case basis. The MMS may charge processing fees if the preparation of a document or study is necessary for MMS to evaluate or process an application or request. For example, MMS may charge processing fees for the preparation of a project-specific Environmental Impact Statement.

In cases where MMS may charge a case-by-case processing fee, we will provide the applicant with a written estimate of the proposed fee for reasonable processing costs. The applicant may comment on the proposed fee or request approval to directly pay a contractor for the document, study, or other activity. We will re-estimate our reasonable processing costs following the procedure established in this section.

Section 285.112 Definitions.

This section provides definitions of terms used throughout the 30 CFR part 285 regulations. Some of the definitions used in this part are definitions that were established in legislation or previously in regulations (i.e., 30 CFR part 250). The definition for archaeological resource is almost identical to the definition used by MMS for oil and gas operations, in the 30 CFR part 250 regulations. This definition mirrors that in the Archaeological Resource Protection Act, and was instituted in response to comments from the Advisory Council on Historic Preservation and the Departmental Consulting Archaeologist on our original rule on archaeology. It is consistent with the definitions in other Federal laws and regulations.

Proposed § 285.112 would add definitions for the revenue sharing program. The proposed definitions are for coastline, miles, distance, income, project (for the purpose of revenue sharing), project area, qualified project, qualified project area, geographic center of a project, eligible State, and revenues.

The term *coastline* would have the same meaning given to the term ''coast line'' in section 2 of the Submerged Lands Act, 43 U.S.C. 1301(c). Added subsection 8(p)(2) of the OCS Lands Act refers to coastal States that have a coastline ''within 15 miles of the geographic center of the project.'' In this context, and wherever not otherwise specified, *miles* would mean nautical miles. The term *distance* would mean the minimum great circle distance.

Income, unless clearly specified to the contrary, would refer to the money received by the project owner or holder of the lease, easement, or other equivalent agreement (e.g., rights-of-way). As such, use of the term income would not imply that project receipts exceeded project expenses (profitability) but rather would serve to distinguish money received by the project owner from money received by the Federal Government (referred to as revenues, defined below).

The term *project,* for the purposes of revenue sharing, would mean the activities necessary to develop, produce, and transmit energy—or to create some other product or service authorized under 30 CFR part 285—in, or from, the OCS within a specific geographic area; the facilities used to develop and produce that energy or create some other product or service; or both. (As necessary, a different definition of ''project'' may be used for other purposes, such as complying with the provisions of the National Environmental Policy Act.) The term project also could be used to refer to the project area.

While the language of the EPAct refers only to a project, for the purposes of clarity in this regulation, use of the term *project area* would allow specific reference to the geographic area for which project rights have been granted via a lease, group of leases, or equivalent agreement.

If a project area is located wholly or partially within the 8(g) zone, and the project is subject to 30 CFR part 285, the project for which that area has been granted would be a *qualified project* for the purposes of subsection 8(p)(2)(B). A *qualified project area* would be the MMS-determined project area for a qualified project. A project easement issued under this part would not be considered part of the qualified project's area, primarily because to do so would make all OCS alternative energy projects qualified projects, no matter how far the actual alternative energy activity is located offshore. Project easements on the OCS would typically serve to bring power to onshore distribution grids, so they must pass through areas within 3 miles of State submerged lands. A secondary reason is that including project easements in the qualified project's area would both complicate and distort calculation of the geometric center of the project's area. However, we propose to allow any fees paid for project easement acreage to constitute part of the revenues from the qualified project.

The geographic center of a project would be the ''centroid'' of the project area; i.e., the balancing point of the acreage of a regularly shaped project area if plotted in two-dimensional space. For example, in the simple case of a project area comprising a 9-square-mile lease block, 3 miles on each side, the centroid would be the middle point inside that square: 1½ miles inward from the midpoint of each side and equidistant from each corner of the square. For irregularly shaped project areas including those that might involve non-contiguous geometric shapes, MMS would determine the geographic center of such projects as the ''geometric center'' calculated by the Geographical Information System software, in conjunction with the methodology and standard mapping data, employed by MMS for identifying OCS boundaries and locations for other purposes.

An *eligible State* would be a coastal State that has submerged lands within 3 miles of any part of a qualified project area, a coastline within 15 miles of the geographical center of a qualified project, or both.

Revenues, for the purpose of revenue sharing on projects covered by the new subsection 8(p)(2)(B) in the OCS Lands Act, are defined to include bonuses, rents, license fees, operating fees, other

fees, and any similar payments paid in connection with a qualified project or qualified project area. These revenues include receipts collected by the Federal Government from the entire project area, not just from the portion of the project or project area extending into the 8(g) zone. Administrative fees, such as those for cost recovery, are not included under this definition of revenues and would not be subject to the 27-percent share.

Section 285.113 How will data and information obtained by MMS under this part be disclosed to the public?

This section describes how MMS will handle data and information submitted to the MMS, including public disclosure and nondisclosure. The MMS will follow the applicable requirements of the Freedom of Information Act (5 U.S.C.) and protect data and information to the extent allowed by law.

Section 285.114 Paperwork Reduction Act Statements—Information Collection

These provisions cover Paperwork Reduction Act statements and information collection requirements pertaining to this part.

Section 285.115 Documents Incorporated by Reference

This section is a listing of the industry standard documents MMS is proposing to incorporate by reference into the 30 CFR part 285 regulations.

Section 285.116 Requests for Information on the State of the Offshore Alternative Energy Industry

This section would allow the Director to request information from industry and other relevant stakeholders (including state and local agencies) as necessary to evaluate the state of the offshore alternative energy industry, including the identification of potential challenges or obstacles to its continued development and require the applicant, lessee, or grant holder to respond to a request in a timely manner. These requests could relate to the identification of environmental, technical, or economic matters that promote or detract from continued development of alternative energy technologies on the OCS. The MMS would use the information received to evaluate potential refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and that ensures fair value for use of the Nation's OCS. The MMS would publish these requests for information in the **Federal Register**.

Section 285.117 [Reserved]

Section 285.118 What are my appeal rights?

This section describes when a decision made by MMS under this part may be appealed and who may appeal. Most decisions made under this part may be appealed according to the regulations found in 30 CFR part 290, subpart A. An unsuccessful bidder may apply for reconsideration by the Director of MMS (Director).

Subpart B—Issuance of OCS Alternative Energy Leases

A. Overview for Subpart B

This subpart proposes a process for issuing alternative energy leases, both for commercial production activities and for assessment or technology testing activities. That process will be competitive, unless there is a determination of noncompetitive interest. In addition, this subpart describes how we will determine when to use a competitive process for issuing an alternative energy lease and identifies auction formats and bidding systems and variables that we may use when that determination is affirmative. Finally, this subpart discusses the terms under which we will issue alternative energy leases. To establish a framework, we begin with a discussion of various types of leases that a prospective alternative energy developer may consider.

Types of Leases. Leases would be required for any type of alternative energy activity on the OCS. We propose to issue two types: (1) commercial leases; and (2) limited leases. Although we also are proposing to convey access to areas of the OCS to the Department of Energy for research under some form of negotiated lease agreement as provided in § 285.238, this discussion of types of leases focuses on the commercial or limited leases that we would issue directly to lessees on a competitive or noncompetitive basis.

A commercial lease would provide the access and operational rights, subject to necessary approvals, to produce, sell, and deliver power on a commercial scale, through spot market transactions or a long-term power purchase agreement. A commercial lease would be issued over the long term (i.e., up to approximately 30 years, with possible renewals) and convey preferential rights to project easements on the OCS for the purpose of installing transmission and distribution systems.

A limited lease would provide the access rights necessary to conduct activities such as site assessment and technology testing that support production of alternative energy but do not themselves result in the commercial sale, use or distribution of electricity or other produced power. A limited lease would be issued for a shorter term (*i.e.*, up to 5 years, with possible renewals), and would not convey any preferential rights to obtain a commercial lease to develop the leased area.

We anticipate that offshore alternative energy companies will prefer to acquire commercial leases rather than limited leases. However, we believe that providing for the issuance of limited leases will give all companies, including smaller entities, an opportunity to pursue alternative energy activities without the commitments and expenses entailed by a long-term commercial lease. For example, it is likely that a limited lease would entail less expense for bidding and lease acquisition, because the rights to assess a site or test technology would have less value than full commercial development rights. Also, there likely would be less effort and cost needed in overall project formulation, planning, and authorizations, as NEPA and CZMA reviews and associated coordination and consultation would focus on smaller-scale and shorter-term activities than would be needed for a commercial lease.

With a limited lease, we expect that a company could acquire a lease relatively inexpensively and test an energy generating device or collect data and information for resource assessment for up to five years. At the end of the limited lease term, if the technology proves successful or the data is promising, the company could apply for a commercial lease encompassing the site or apply for multiple leases in various OCS locations where it wishes to pursue commercial production with its now proven technology. The limited lease in this case would have the effect of promoting collection of resource information or the development of new technology that could be commercially applied in the future.

A limited lease would not offer any preferential right or option to future commercial development of the lease site. The competition requirements of subsection 8(p) of the OCS Lands Act would apply if the lessee of a limited lease subsequently requests a commercial lease. We expect that, if pursued, the majority of limited leases would be issued noncompetitively to small businesses in areas of the OCS that are not otherwise in demand for commercial alternative energy activity.

The most important factor for an applicant to consider in deciding

whether to pursue a commercial lease or a limited lease is the right to commercial development of the leased site. Such right is included only in a commercial lease. Thus, if an alternative energy project applicant is interested in demonstrating a particular alternative energy technology but is unsure that it will ultimately lead to commercial production, we encourage that applicant to pursue a commercial lease because it reserves the right to commercially develop the OCS site. Pursuing a commercial lease would not obligate the lessee to remain on a lease for the full term of the lease. As provided in subpart D, if the lessee no longer intends to commercially develop the OCS a commercial lease may be relinquished by the lessee.

Alternatively, if a company obtained a limited lease to initiate technology testing activities and subsequently determined that full-scale commercial development of the OCS area is possible, that lessee of a limited lease would have no right to develop that site without applying for a commercial lease, which is subject to potential competition following public notice. For these reasons, we anticipate that most project applicants will pursue commercial leases to ensure that all necessary rights for future development are reserved should initial testing activities show that a commercial project could be viable.

In developing the proposed rule, we incorporated requirements of the EPAct, considered public comment received in response to the ANPR (70 FR 77345) published in the **Federal Register** on December 30, 2005, and reviewed other existing models for the conveyance of rights for energy and mineral development in the United States and abroad. One model we considered is a two-stage lease that would authorize short-term resource assessment and technology testing in the first phase and then be converted to authorize long-term commercial production activities in the second phase. We believe that such an approach would entail the same level of consultation and review that would be involved in the issuance of the single commercial lease we are proposing to authorize these activities. Also, a lessee may accomplish the same activities under a single commercial lease as under a two-stage lease. In either instance, the lessee would be able to do resource assessment and technology testing and then decide whether to continue the lease in effect for commercial production. Therefore, we do not see the benefit of offering two-stage leases in lieu of a single commercial lease as proposed.

The types of leases proposed and the activities authorized are intended to provide both for long-term, large scale commercial production of alternative energy and for shorter-term, smaller scale activities in support of alternative energy production, such as site assessment and technology testing activities. We invite comments on the proposed types of leases described above and the specific requirements for leases described in the section-by-section analysis below.

Issuing Leases. It is the goal of MMS to issue alternative energy leases through a simple and straightforward process and in a fair and equitable manner. The EPAct requirements mean that both a competitive and noncompetitive system will be employed.

We anticipate that initial leasing of alternative energy sites on the OCS may be driven by unsolicited applications, rather than an MMS-initiated request for interest in an area. A formal request for interest would be part of the process for confirming that there is no competitive interest in the area identified in the unsolicited application. The proposed process for noncompetitive issuance of OCS alternative energy leases is based on the requirements of EPAct and is patterned after the existing MMS process for issuing noncompetitive negotiated agreements for the conveyance of OCS sand and gravel. We invite comments on the proposed process, including the proposed acquisition fee and case-by-case procedures by which applicants would pay for associated NEPA analysis. We also seek comment on the process we would use to obtain public input on unsolicited applications and the considerations for determining whether competitive interest exists.

Any leasing process for OCS alternative energy activity, whether competitive or noncompetitive, would include full analysis as required by NEPA and other applicable laws. Table 1, which is presented in the discussion titled ''*Overview of the process*'' under the Compliance discussion, describes the NEPA requirements for steps in the OCS alternative energy process, including the lease issuance step.

The proposed competitive sale process for alternative energy leases is similar to long-standing Federal and State processes for conveying mineral rights. This process would have multiple steps, beginning with a Call for Information and Nominations (Call) that would solicit information from potential bidders as well as other interested and affected parties concerning areas to be considered for leasing. The Call serves several functions by informing the public of the proposed lease sale, inviting comments from all interested and affected parties—including Federal, State, and local government agencies and interest groups—to identify their issues and concerns about the sale, and requesting potential lessees to describe their bidding interest in certain areas. After considering input received in response to the Call, the next step would be Area Identification, in which MMS would identify the area to be considered for leasing and analyzed under NEPA. Following the NEPA analysis, MMS would issue a Proposed Sale Notice for public comment. Next, the MMS would publish a Final Sale Notice describing the lease sale, including the auction process we will use to award leases on a competitive basis. Participation in a competitive sale would not be limited to those entities that commented or expressed interest in the area unless the sale notice specifies otherwise. We invite comments on all aspects of the proposed sale process, including the proposed criteria for determining competition, proceeding with competitive auctions, and awarding leases.

We want to encourage competition for OCS leases from entities that will diligently develop alternative energy resources and avoid situations where leases are acquired for strategic or purely speculative purposes. Diligence requirements under subparts E and F of this part would require lessees to make payments and meet lease development requirements that ensure efficient and expeditious activities on the lease. Also, subpart D of the proposed rule would allow leases to be sold and assigned to other companies under certain conditions.

A competitive lease sale for alternative energy activities could be held for one type of activity (e.g., wind) or for various activities (e.g., wind, wave, current, etc). We would determine the scope of competing alternative energy activities based on responses to initial public notices (Request for Information, Call for Information and Nominations, or other Federal notices), issued during the leasing process and we would clearly state that scope (e.g. wind, wave, current, etc.) early in that process and the subsequent Proposed and Final Sale Notices. If we decided to limit competition to one type of activity (e.g., current), then we would not consider bids for any other type of activity and the lease that is issued would be limited to that activity. If we decided to open competition to more than one type of activity (e.g., wind, wave, current, etc.),

then we would consider all bids for one or more of those activities and the lease instrument may authorize one or more of those activities.

We would like to know if the proposed leasing system and lease development requirements are appropriate to foster efficient development of OCS alternative energy resources, or whether there are other conditions or requirements that we should consider to prevent speculative bidding, holding and resale of the lease rights.

Lease Terms. Provisions relating to the duration of leases are set forth in several sections of this subpart B as well as in subpart D. Sections 285.235 and 285.236 set finite terms for both commercial and limited leases while providing for automatic extensions only if necessary for MMS review and approval of necessary plans. Depending on the type of lease (commercial or limited) and the acquisition process (competitive or noncompetitive), a lease could have up to three distinct terms: A 6-month preliminary term, a 5-year site assessment term, and a 25-year operations term. Sections 285.415–421 discuss suspensions that extend the term of a lease, and §§ 285.425 through 427 address lease renewal.

In establishing these lease terms and related provisions for OCS alternative energy leases we considered numerous suggestions. Two of the most prominent proposals were (1) provide for open-ended lease terms based on the oil and gas lease model (i.e., continuation of leases by drilling or producing) and (2) provide for automatic extensions and renewals of lease terms. We believe that both of these proposals could perpetuate inefficient or obsolete operations on a lease. We prefer to retain discretion relating to lease terms in order to promote diligent development and ensure use of the most effective and most efficient operating procedures and technologies. For commercial leases, the proposed 25-year operations term coincides with the anticipated term that a lessee and utility would establish in a power purchase agreement. It is possible that technology could improve substantially over such a 25-year term, and we want the ability to ensure that operations on leases keep in step with such technological improvements. The proposed lease term provisions are designed to be flexible enough to allow for operations over the entire design life of facility equipment but also allow for lease relinquishment, contraction, or termination if the seller is unable to market production.

We believe that the proposed lease terms and related provisions would allow necessary flexibility while promoting diligence, thereby allowing OCS alternative energy activities to operate efficiently. We invite comments on whether the length and structure of these terms would inhibit legitimate efforts to develop alternative energy projects on the OCS and whether there would be better alternatives.

Section by Section Discussion for Subpart B

The discussion in part A of this section of the preamble summarized principal concepts in the proposed procedures for conveying rights to develop alternative energy resources on the OCS. This section-by-section analysis will describe and provide more details on each of the proposed provisions and discuss the rationale for proposing that provision.

General Lease Information

Section 285.200 What rights are granted with a lease issued under this part?

We may issue OCS leases for any alternative energy source. Paragraph (a) of this section identifies the types of alternative energy leases that we propose to make available and describes rights that come with a lease issued under these regulations. In general, a lease issued under this part conveys the right to install and operate facilities on a designated portion of the OCS for the purpose of conducting commercial (production) activities or limited (noncommercial) activities supporting the production of energy from alternative energy sources. All rights are subject to compliance with requirements to secure approvals of, and then comply with, applicable plans, i.e., Site Assessment Plan (SAP), Construction and Operations Plan (COP), and General Activities Plan (GAP), that are set forth in proposed subpart F.

Under paragraph (b) of this section, leases generally include the right to one or more project easements without further competition for the purpose of installing lines for gathering, transmission, and distribution of electricity; as well as pipelines for transporting other energy products (i.e. hydrogen); and appurtenances on the OCS as necessary to conduct operations. This could include the cables, pipelines and other structures necessary to transmit electricity or transport other energy product produced from the OCS to shore. The lessee would apply to MMS for the project easement as part of the COP or GAP. When we approve the proposed plan and project easement, an addendum covering the project easement will be incorporated in the lease. Ancillary activities that are not associated with an OCS alternative energy lease (e.g., a transmission line or support structure located in Federal waters to support a project in State waters or a commonly shared line supporting multiple leases) would be permitted and managed as a separate ROW grant or RUE grant under proposed subpart C.

The proposed lease right to a project easement is necessitated by the nature of power generation activities as well as the competition requirement set forth in EPAct [subsection 8(p)(3) of the OCS Lands Act]. Each alternative energy project located offshore will need to transmit produced electricity or transport other energy product (i.e. hydrogen) to shore by cable or pipeline. If access to the corridor needed for transmission or transportation is not granted with the lease, the lessee would be required to compete for that right in accordance with subsection 8(p)(3). The uncertainty associated with acquiring a lease for a generation project in the absence of a guaranteed right to the path needed to transmit or transport the produced energy to market could be a significant disincentive to investment. Therefore, we propose to award the transmission or transportation right along with the lease. We invite comments on the proposed project easement provision.

Paragraph (c) of this section provides for phased lease development. The proposed commercial lease framework would be capable of accommodating multi-phase project development as is commonly used for onshore utility-scale wind projects (see §§ 285.200 and 285.629). The lease applicant would need to inform us of its intent to develop a project in multiple phases and would need to lease from the outset all of the acreage necessary for the full build-out envisioned. If the applicant for a commercial lease phases in operations, the applicant must pay rentals on the portion of the lease that is not producing and operating fees on the portion of the lease that is producing or on which construction is underway. We may waive rental for the acreage on which activities are deferred, as provided by subpart E on a case-by-case basis for any lease issued under this part. As additional acreage is developed, operating fees would be charged in place of rentals, as appropriate. If the lessee decides not to develop the additional acreage, it would relinquish that acreage, or MMS could contract the lease, as provided in §§ 285.435 and 285.436. Multi-phased project

development would have to comply with NEPA, CZMA, and other applicable laws.

Section 285.201 How will MMS issue leases?

As required by subsection 8(p) of the OCS Lands Act, MMS must issue leases, easements, or ROWs for OCS alternative energy activities on a competitive basis unless we determine after public notice that there is no competitive interest. If we determine that there is competitive interest, we will conduct a fair and open competition process. When we receive an unsolicited request for a lease, we will make a determination if a competitive interest exists by first issuing a public notice of the request. After considering the comments received on the notice, as required by the OCS Lands Act, section 8(p), we will issue a determination that there is, or is not, competitive interest in the proposed leases. If two or more project proponents express interest in leasing the same area of the OCS (overlapping partially or completely), we would conclude that competitive interest exists and conduct a competitive lease sale. We may offer areas for leasing that do not conform exactly with the areas nominated for leasing, after analysis of requirements given in subsection 8(p)(4) of the OCS Lands Act. We invite comments on considerations other than interest by more than one party in leasing the same area of the OCS to determine whether or not there is a need to conduct a competitive lease sale in an area.

We are aware that instances of partially overlapping interests may occur. Even if the overlap is a relatively small portion of the respective areas of interest, a process for deciding what to offer and how to choose the winning bid needs to be established. For example, if proposed Project A entails 10,000 acres for generation of 500 megawatts and Project B entails 2,000 acres for 100 MW, and there is an overlap of 1,000 acres, we would have to determine how to resolve the conflict. Six alternative approaches for addressing such a situation are discussed below. The actual set of approaches that we could consider for issuing leases is not necessarily limited to these options.

(1) Offer both the Project A and Project B areas and award a lease for one or the other to the high bidder. If a cash bonus is a bid variable, it could be based on either the total or the amount per acre, and if an operating fee is a bid variable, it could be based on the total or the amount per MW of proposed capacity.

(2) Offer and award a lease through competition for only the overlapping 1,000-acre area and then follow with a noncompetitive lease issuance for the remaining 9,000 acres under project A and 1,000 acres under project B.

(3) Offer to lease individual tracts covering the area of interest, designated as legal subdivisions of a standard OCS lease block of 9 square miles. Bidders that value specific tracts most highly could win leases through a simultaneous tract offering, and subsequently propose operations on multiple ¼¼¼ legal subdivisions to obtain possible synergies.

(4) Offer the combined A and B areas as one lease and award the lease to the high bidder (the winning lessee could then relinquish excess acreage).

(5) Offer standard block sizes or legal subdivisions of those block sizes and allow bidders to ''package'' those blocks in a bidding unit. Identify the various features of the auction, e.g., bidder eligibility to compete and to remain active in various rounds, information to be released between rounds, rules for ending the auction, method for choosing the provisional high bidders, restrictions on bidding in subsequent rounds, etc.

(6) Rely on coordination and consultation efforts with State and local governments to identify one preferable project area to be offered and awarded to the high bidder.

We invite comments on any of these approaches. In particular, what do you think is the capability of package bidding to ensure a fair return and to induce an efficient allocation of leases?

We also are aware that there will be other instances in which multiple projects could be proposed in the same general area with no actual geographic overlap, but the number of lease tracts may need to be limited based on regional or local needs and concerns. For example, a State or locality may identify a need for a certain amount of renewable energy generation from an OCS source. If the number of prospective leases proposed for an area greatly exceeded the projected demand, we may limit the number of tracts that could be offered. Such a case could be addressed by proceeding with an intertract competition in which multiple tracts could be offered for lease in the proposed auction formats described below (see §§ 285.220 through 285.223), but the number of approved bids would be limited. Accordingly, MMS proposes to use its discretion and, based on consultation—notably with the affected States and local communities, as well as the applicants—identify the appropriate tract or set of tracts to be offered for sale, thereby forgoing the need for intertract competition. We offer this approach in an effort to encourage a level of OCS alternative energy development commensurate with regional and local needs. We invite comments on our proposed approach, as well as other possible approaches such as intertract competitive auctions, to address this issue.

Generally, we believe that priority should be given to leasing tracts for commercial operations so that in instances where there is competition between proponents of commercial leasing and limited leasing, commercial leasing would prevail (assuming that the proposed activities are not compatible). Thus, competitive leasing of areas for limited leases might be much less likely than for commercial leases, and limited leases might be confined to areas in which there is no interest in commercial leasing. Also, given such a priority, commercial leasing of an area would proceed noncompetitively even if interest in limited leasing in the same area is expressed. We invite comments on this proposed priority.

Once we make the determination about competitive interest, we will proceed with issuing leases under the appropriate process as described in this subpart. The competitive process is set forth in §§ 285.210 through 285.225, and the noncompetitive process is set forth in §§ 285.230 through 285.231. MMS will prepare an OCS alternative energy lease form and provide or reference such a lease form in a public notice. The approved lease form (or forms) for OCS alternative energy will be developed separately from the rulemaking and in consultation with interested and affected parties. This approach is designed to give us the flexibility to accommodate all possible alternative energy activities and adapt forms as necessary. We invite comments on this approach for developing appropriate lease documents.

Section 285.202 What types of leases will MMS issue?

This section states that MMS may issue leases for one or more types of activity relating to assessment and production of alternative energy and may issue commercial or limited leases as discussed above in the overview of this subpart. A single purpose lease would authorize one type of activity (e.g., wind power generation), whereas a multi-purpose lease would authorize multiple types of activity (e.g., both wind and wave power generation). A lease issued for one type of alternative energy activity would not necessarily result in prohibition of other types of

activities in that same area, which could be authorized by separate leases issued subsequently. For example, we may conduct a lease sale for wind and then conduct a lease sale for wave activities in that same area. While the initial lessee in such a case would be restricted to wind development, we could authorize multiple types of OCS alternative energy activities in an OCS area to the extent that these activities are compatible and do not unreasonably impede the ability of the existing lessee to reasonably conduct its operations in the area. We will not issue access rights for oil, gas, or any other minerals under this part.

Section 285.203 With whom will MMS consult before issuance of a lease?

As directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. ESA and Magnuson-Stevens Fishery Conservation and Management Act (MSA)), MMS will coordinate and consult with relevant Federal agencies, with the Governor of any State, and the executive of any local government that may be affected by an alternative energy lease. As provided in § 285.102 of subpart A, we may invite any Governor of an affected State or government executive of an affected local government to participate in a joint task force or other joint planning or coordination agreement if we are considering offering or issuing leases (or grants). Participation in a task force would give the parties opportunities to contribute to the planning process and access to nonproprietary information.

Further, we recommend that companies that plan to pursue alternative energy activities on the OCS conduct preliminary outreach early in the process by contacting interested and affected parties to provide information and receive feedback concerning their proposals. A provision in subpart A of the proposed regulations encourages this type of early contact and coordination (see § 285.103(f)). This approach is consistent with the many suggestions we have received concerning timely and thorough coordination and consultation, notably a recommendation from the U.S. Coast Guard calling for early outreach from OCS alternative energy project applicants.

We believe that it is particularly important for companies that plan to produce and deliver electricity to existing onshore distribution systems to consult with involved States and localities to establish power generation needs and to become aware of pertinent regulatory requirements before pursuing OCS commercial development and production rights. Early communication among potential developers and the States and localities that would be most affected by any development that ensues and that regulate associated onshore facilities helps assure that authorized OCS alternative energy activity will be compatible with and support any renewable portfolio standards, policies on the location of transmission and other support facilities, and any other relevant factors.

We invite comments on issues relevant to coordination and consultation with Federal agencies and State and local governments.

Section 285.204 What areas are available for leasing consideration?

We intend to consider offering for lease any area of the OCS that is appropriately platted, except areas prohibited from leasing by EPAct. Subsection 8(p)(10) of the OCS Lands Act prohibits alternative energy leasing in any area of the OCS within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument. In administering this program, the Secretary will take into account other uses and may withdraw portions of the OCS from leasing under this part and restrict operations on leases for national defense purposes.

The areas we actually make available for alternative energy leasing are likely to be determined through a process that assesses different types of alternative energy resources and potential environmental impacts and other relevant information on a national, regional, or more specific basis. The assessment process will include coordination and consultation with Federal, State, and local governments and other interested and affected parties and may entail the establishment of task forces as discussed above. Based on such assessments, we would have the discretion to offer or not offer to lease areas as appropriate. We intend to use our existing system of OCS regions, planning areas, official protraction diagrams, and lease blocks to designate, delineate, and describe areas of the OCS under the OCS alternative energy program.

We invite comments on the proposed process for choosing areas to make available for leasing and the proposed means for mapping and describing those areas.

Section 285.205 How will leases be mapped?

This section states that MMS will prepare and use necessary leasing maps and official protraction diagrams as it does for other energy and mineral leasing on OCS (e.g., 30 CFR 256.8)

Section 285.206 What is the lease size?

We will determine the size for each lease on a case-by-case basis to ensure that it is an appropriate size to accommodate the anticipated activities. The processes leading to both competitive and noncompetitive issuance of leases will provide public notice of the lease size. Since there is no size limit in the EPAct amendment to the OCS Lands Act, and because it would not be prudent to prescribe such a limit for an unknown range of future activities with varying areal requirements, we favor the flexibility of this proposed approach.

We plan to delineate leases by using mapped OCS blocks, portions of such blocks, or aggregations of such blocks. For example, a limited lease supporting a small data gathering or technology testing facility might require only a small part of a 3-mile by 3-mile OCS block. In such a case the lessee could acquire (or retain after originally acquiring a larger area) an aliquot part as small as a quarter-quarter (i.e., 1/16) of a block. On the other hand, it is likely that a typical commercial-scale alternative energy project would result in the issuance of one lease encompassing several contiguous OCS blocks. We invite comments on the proposed provisions governing lease size.

Section 285.207 Through 285.209 [Reserved]

Competitive Lease Process

Section 285.210 How does MMS initiate the competitive leasing process?

This section establishes a process for us to solicit proposals to develop the alternative energy potential on the OCS. We may use a general Request for Interest to gauge interest in alternative energy leasing anywhere on the OCS or a specific Request for Interest to assess interest in specific areas after receiving an unsolicited leasing proposal. Any Request for Interest will be published in the **Federal Register**.

Depending on the level and extent of interest and review of comments, we may formulate a nationwide or regional program schedule of lease sales or we may initiate individual competitive lease sales on a case-by-case basis without an overarching program schedule. Once a determination is made

to offer an area(s) for competitive lease, we would initiate an alternative energy lease sale process.

Section 285.211 What is the process for competitive issuance of leases?

This section lays out the discrete steps we propose to follow in preparing for and holding a lease auction and issuing leases competitively. These steps include a Call for Information and Nominations (Call), an Area Identification, a Proposed Sale Notice, and a Final Sale Notice.

An Area Identification step would follow the Call. In it we would use responses to the Call and other information to delineate a geographical area or areas to be considered for leasing and analysis under NEPA and other applicable laws. This process includes identifying potential impacts on the environment, consulting with other agencies and State and local officials on mitigating stipulations and conditions, and perhaps public hearings. We would provide public notice of the area identified for leasing, which could encompass the OCS blocks, portions of blocks, or aggregations of blocks requested for leasing.

The product of these evaluations and consultations would then be reflected in the Sale Notices that implement a competitive lease sale. We invite comments on the most useful way to describe areas we decide to make available for alternative energy leasing.

Section 285.212 What must I submit in response to a Request for Interest or a Call for Information and Nominations?

This section describes the type of information we seek from potential lessees, in a response to a Request for Interest or a Call. We may issue a broad request for interest to be used as a basis for developing a national or regional schedule of alternative energy lease sales, or we may issue a tract specific request to be used to determine competitive interest in a particular area that has been proposed for leasing. We would issue a Call as the first step in a competitive lease sale process to elicit information from all interested and affected parties concerning proposed leasing activities and the existing conditions that may affect or be affected by those activities. In all cases—responding to a general or specific Request for Interest or a Call—we would require prospective lessees to submit the same types of information. That information would include: the area of interest for a possible lease; a general description of objectives and the facilities needed to achieve those objectives; a general schedule of proposed activities, including those leading to commercial production or other approved operations; available and pertinent data and information concerning alternative energy resources and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest; certification that the proposed activity conforms with State and local energy planning requirements, initiatives or guidance, as appropriate; documentation showing that the applicant is qualified to hold a lease; and any other information specifically requested in the **Federal Register** notice.

We believe that this information is necessary for MMS in developing leasing schedules, determining competitive interest for unsolicited proposals, and proceeding with alternative energy lease sales. We also believe that such information should be readily available from prospective lessees and that this requirement poses no undue burden. In cases where a prospective lessee has already submitted the required information, we would not require it to be submitted subsequently. For example, if a company responded to a broad or specific Request for Interest for an area that MMS subsequently decided to offer in a lease sale, that company would not have to resubmit information in response to the Call for that sale. Only companies that had not previously expressed interest and submitted information would be expected to provide the required information in response to the Call.

In addition to the items listed, we believe that information relating to potential markets that could be served and processes that could be used to serve those markets is important. Also, information on similar projects elsewhere in the world and on issues associated with proceeding in your proposed area(s) may be necessary for our deliberations, especially those entailed in developing a broad leasing program or schedule. We invite comments on information that we should request to identify alternative energy interest in general or specific OCS areas.

Subpart A discusses how we would handle such data and information, including procedures for withholding material from public disclosure to the extent allowed by law. We invite comments on the handling of data and information.

Section 285.213 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?

This section states that we will use the information we receive to identify lease areas, develop options for conducting environmental analysis and adopting lease provisions, and prepare documentation to satisfy relevant Federal requirements, such as NEPA, the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

For purposes of Federal consistency, we will treat alternative energy competitive lease offerings as Federal agency activities and follow the requirements of subsection 307(c)(1) of the CZMA procedures. That means we must determine if the effects to any land or water use or natural resource of a State's coastal zone from the competitive lease offering are reasonably foreseeable and comply with the appropriate Federal consistency regulatory path found in 15 CFR part 930 subpart C. We invite comments on how this process could be expedited.

Section 285.214 What areas will MMS offer in a lease sale?

This section states that the areas we will offer for lease will be identified as provided in § 285.211(b). However, it should be noted that the leasing area could be reduced subsequently through the lease sale process. This section also states that no further nominations for a lease sale will be accepted following the completion of the Call for Information and Nominations step.

Section 285.215 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?

We will publish Proposed Sale Notices and Final Sale Notices in the **Federal Register** for each lease sale. Proposed Sale Notices and Final Sale Notices will provide information pertaining to:

- The area offered for leasing;
- Proposed and final lease terms and conditions including lease size, lease term, payment and bond requirements, performance requirements, and site specific lease stipulations;
- Auction details including bidding procedures and systems, the bid variable and minimum bid, the bid deposit, the place and time for filing bids and the place, date and hour for opening bids;
- The official MMS lease form to be used or a reference to that form;

• Bid evaluation criteria we will use and how the criteria will be used in decision-making for awarding a lease;
• Award procedures including how and when we will award leases and how we will handle unsuccessful bids or applications;
• Procedures for appealing the lease issuance decision; and
• Execution of the lease instrument.

The Proposed Sale Notice would invite comments from all interested and affected parties. We expect that the use of such a notice in the process of offering leases for development of OCS alternative energy sources would provide a valuable opportunity for us to consult on the selection of appropriate competitive leasing procedures and the formulation of the details of the lease instruments to be issued. After considering comments on the Proposed Sale Notice, we would revise and publish a Final Sale Notice that adjusts as appropriate and confirms the same information. The final steps in the leasing process would be conducting the actual auction and awarding the leases. Figure 2 shows the steps in the proposed competitive leasing process.

We invite comments on whether this process provides sufficient information and notice to encourage competition for prospective alternative energy sites.

Section 285.216 through 285.219 [Reserved]

Competitive Lease Award Process

Section 285.220 What auction format may MMS use in a lease sale?

This and the next two sections describe how we propose to structure a competitive process for granting alternative energy leases. We will hold auctions to award leases using either sealed bidding, ascending bidding, or two-stage bidding. The sealed bidding format is mandated for oil and gas lease sales by subsection 8(a) of the OCS Lands Act. In contrast, no particular auction format is specified for alternative energy lease sales conducted under subsection 8(p) of the OCS Lands Act and there may be advantages to using other approaches with emerging OCS industries.

For each auction, we would establish a sale area or sale areas based on information received in response to Request for Interest and Call notices, and establish a bid variable, a minimum acceptable bid, and criteria for bid acceptance. We would include specific details of the selected auction format in appropriate **Federal Register** notices including the Proposed Sale Notice and the Final Sale Notice. The sale notices would include details on the bidding process, such as the auction format, bidder eligibility, bidder deposits, the bid variable, the object of the bidding, minimum bid amounts, bid increments, criteria for ending or continuing the auction, method for determining the provisional winning bidder(s), and bid adequacy considerations. A general description of the three auction formats from which we propose to choose follows.

Sealed Bidding would consist of a single round and provide for each lease sale participant to submit a single bid by post or e-mail, after which we would publicly announce the high bidder. We will specify in the Call either a cash bonus or an operating fee rate for the bid variable. This traditional format works best in cases where there are limited areas of overlapping interest and one bidder is much better informed than others about the underlying technical and economic prospects of leasing the area for use in an alternative energy project.

This auction format is administratively compatible with application of a ranking and filtering procedure which would identify the set of highest bids per tract before MMS decides which of those tracts to lease. This ranking of high bids can serve as a bid adequacy mechanism for determining which high bids to accept. It also has the advantage of creating competition for lease rights across tracts, when competition for individual leases is absent. This procedure is known as ''intertract competition.''

Ascending Bidding involves multiple rounds of bidding and provides for participants to submit increasing sequential bids over a predefined time period. Again, we will specify either a cash bonus or an operating fee rate for the bid variable. Bids may be submitted orally or electronically (e.g., Internet). If bidding activity continues right up to the deadline, the time period may be continuously extended as warranted by additional bidding activity. This type of auction format works best in the presence of common high interest and strong competition among bidders who are equally informed about the quality and value of the lease area.

Two-stage Bidding would combine the two formats previously discussed, sealed and ascending bidding. Generally, we would require interested bidders to offer a minimum cash bonus to join the auction. Then, in the most likely process formulation, participants would submit ascending bids (e.g., operating fee rate, cash bonus, etc.) in the first stage until all but two bidders drop out or more than one bidder offers to pay the maximum bid amount specified by MMS. The auction would then move to the second stage, where the remaining participants typically would offer a sealed bid on a bidding variable not employed in stage one. However, we reserve the option to conduct the two-stage auction using sealed or ascending bidding in either or both stages, and to select the bid variables in each stage. This type of auction works well when competition for specific acreage is weak, or when potential lessees are better informed than the lessor.

Subject to the bid adequacy requirements referenced in § 285.222, typically the qualified bidder offering the highest cash bonus or the highest fee rate, depending on which deciding bid variable is used, would win the lease. When there are multiple leases, intertract competition could be used to decide which of the high bids to accept under the rubric of bid adequacy.

We invite comments on the relative merits of these alternative auction formats for leasing OCS acreage for alternative energy projects and on other alternatives. Also, we request comments on whether allowing bidders to define a set of tracts on which they wish to submit a package bid would increase interest in a sale, generate higher aggregate bonus bids, and help ensure that bidders acquire their primary tracts of interest.

Section 285.221 What bidding systems may MMS use for commercial leases and limited leases?

A bidding system is composed of various elements, the most important of which are the bid variable(s) and the payment requirements. The bid variable is generally subject to a minimum bid level and potentially to a reservation price, both established by MMS. The minimum bid level represents the entry level of the bid, i.e., the smallest bid amount that MMS might consider acceptable. Usually the same minimum bid level would be set across certain classes of tracts. The reservation price is a tract-specific measure that represents an estimate of the underlying value of the tract when used for a specific purpose. In cases where sufficient competition is deemed to exist, a reservation price typically would not be needed to ensure that a fair return is obtained in the auction for the individual tract. For an alternative energy lease, we propose to choose from five different bid variables:

(1) A cash bonus with a constant or sliding operating fee rate;

(2) a constant operating fee rate with a fixed cash bonus;

(3) an initial operating fee rate for use in a sliding operating fee calculation with a fixed cash bonus;

(4) a constant operating fee rate followed by a cash bonus; or

(5) the starting value for a fee rate to be used in calculating a sliding operating fee followed by a cash bonus.

The fee rate in this context is analogous to a royalty rate used in oil and gas leasing. If a cash bonus is the bid variable, the operating fee each year would be based on the formula in subpart E. If the fee rate is the bid variable, the cash bonus would be fixed, and the operating fee would be calculated using the fee rate offered by the winning bidder as a part of the formula in subpart E of this regulation. The two-bid variable systems, cash bonus and operating fee rate, either constant or as a sliding scale, would be used only in a two-stage auction.

The resulting annual operating fee in these two-stage bidding auctions would be derived from the formula established in subpart E of this part which is based in part on megawatts of installed capacity and the prevailing market rates for electricity sold in the consuming region targeted by the lease. Values for the formula components, excluding the fee rate when it is used as the bid variable, will be established in the Final Sale Notice or in the final public notice in the case of a non-competitive lease.

For limited leases we propose the cash bonus as the only permissible bid variable. The MMS imposed no operating fee for limited leases because such leases are not authorized to engage in commercial operations. This also means we will not be using a two-stage auction format for issuing limited leases.

The proposed bidding systems and parameters have been developed based on a consideration of the EPAct requirements, domestic and foreign alternative energy programs, and the long-standing OCS oil and gas leasing program, as well as comments received in response to the ANPR. The proposed alternatives for a competitive lease sale bidding system are used in other domestic mineral leasing programs such as offshore oil and gas. Also, the BLM, which manages ROWs for wind energy development on U.S. Federal onshore lands, has held one competitive auction to date. In that auction BLM used a cash bonus as the bid variable and established a minimum initial bid of $17.00 per acre.

One alternative bidding system suggested by commenters that we considered but rejected is a multiple-factor system. Such a system would consist of many different bid variables as factors, both quantitative and qualitative, in determining the winning bid in a competitive process. This is the approach used in Denmark, which has the most developed offshore wind program in the world and issues licenses based on multiple factors (e.g., project design, operator experience, etc.). We concluded that our AEAU program requires a bidding system based on clear objective standards, simple to administer and transparent to the public.

We invite comments on which of the proposed bidding systems is most appropriate for alternative energy leases and why.

Section 285.222 What does MMS do with my bid?

We will open the sealed bids at the place, date, and hour specified in the Final Sale Notice for the sole purpose of publicly announcing and recording the bids. However, we will not accept or reject any bids at that time. We will determine whether to accept a high bid as a winning bid based on the following factors.

With sealed bidding, bid acceptance criteria typically rely on (1) minimum bid levels we establish with bids above that level being acceptable if there is a sufficient level of competition or if the lease area is not considered prospective, or (2) assessments of the adequacy of the high bids for a specific lease area in comparison to calculated reservation prices for the property rights that are the object of the bidding. Whereas a minimum bid reflects a publicized level below which bids are not deemed satisfactory or competitive and thus will not be considered, the reservation price reflects an unpublished estimate of the value of the tract and thus generally the lowest bid level at which we would award the lease. In this context, the term reservation price could also refer to the lowest operating fee at which we would award the lease, if the operating fee is used as the deciding bid variable. The calculation of the reservation price compensates for insufficient market competition, so if enough competition for the tract materializes, there is less need to rely on a reservation price. However, when there is little competition for specific acreage, the reservation price becomes critical if the absence of competition is known to the interested party. An additional factor we may consider in calculating the reservation price is the value of other uses of the area that are incompatible with the alternative energy project and which are under consideration for leasing.

Due to the competitive aspects of the ascending bidding procedure, bid acceptance ordinarily would be less dependent on application of a reservation price and instead could rely solely on the bidding results to ensure receipt of fair market value. The ascending bid framework has been used by the BLM for allocating the property ROWs for wind energy projects. If we conclude that ascending bidding is the preferred auction format for many alternative energy situations, then sale procedures for ascending auctions could differ substantially from the customary OCS sealed bid model.

With a two-stage auction format, the bid acceptance considerations are the same as those discussed that apply to the format for the final stage that was used (i.e. sealed and/or ascending bidding).

One way to reduce reliance on a calculated reservation price in sealed bidding or two-stage bidding could be to apply the auction format to multiple areas employing intertract competition. Intertract competition may be needed in areas with high industry interest in a number of OCS leases, but where expected demand per tract is limited or constrained. In addition to enhancing competition, the object of intertract competition would be to provide signals through the bids which serve to assist us in leasing only the most valuable sources of energy needed to meet the expected demand.

Our goal is to accept or reject all sealed bids within 90-calendar days after the sale date, although we may extend that time if necessary. In the case of ascending bidding, we may be able to determine the winning bidder once we confirm that the high bidder is a qualified bidder. Nevertheless, we reserve the right to reject any and all bids, regardless of the amount offered or bidding system employed. We will send a written notice to each high bidder, accepting or rejecting the bid or informing the bidder of tied high bids.

We invite comments on the appropriate bid acceptance considerations and the potential use of intertract competition.

Section 285.223 What does MMS do if there is a tie for the highest bid?

This section does not apply to bids at the end of stage one of a two-stage bidding format. If the highest bids are tied, we will notify the tied bidders. Within 15-calendar days after notification, unless otherwise specified in the Final Sale Notice, we will determine the winning bidder from among the tied bidders by lot.

The proposed provisions governing bidding procedures and results are largely patterned after the way other mineral leases are handled by the Federal Government. However, the procedures proposed to govern tied high bids are slightly different from other existing systems in that they are designed to always result in the award of a lease rather than returning it to the government inventory for future offering. We invite comments on the likelihood of receiving tied bids and on the proposed provisions for selecting a winner in that case. In particular, would holding an additional round of bidding be more appropriate than resolving a tie by lot or, perhaps, by offering a joint lease?

Section 285.224 What happens if MMS accepts my bid?

This section explains the responsibilities of the successful bidder. Our acceptance notice will include three copies of the lease to be executed by the bidder. The first 6 months' rental, the balance of the winning or fixed bonus, and required financial assurance will be due within 10-business days. We may extend this deadline upon request if we find that the delay is due to events beyond the control of the successful bidder. After the three executed copies are returned to MMS, we will execute the lease on behalf of the United States and send one fully executed copy to the lessee. If the bidder fails to execute the lease or otherwise fulfill requirements, the bidder's deposit will be forfeited and no lease will be issued.

If, before the lease or grant is executed on behalf of the United States, the OCS area which would be subject to the lease is withdrawn or restricted from leasing, we will not issue a lease and will refund the deposit. We reserve this right to rescind a lease offering in situations where new environmental or other concerns about the prospective area, operation, or need for the facility surface after the lease sale. If the awarded lease or grant is executed by an agent acting on behalf of the bidder, the bidder must submit with the executed lease evidence that the agent is authorized to act on behalf of the bidder. We invite comments on any difficulties these procedures for formally issuing of a lease might cause potential lessees.

Section 285.225 What happens if my bid is rejected and what are my appeal rights?

This section explains what options a bidder has if we reject the apparent high bid. In that case, we will provide a written statement of reasons and refund any money deposited with the bid. The bidder may then petition the MMS Director for reconsideration in writing, within 15-business days of bid rejection. The Director will send the bidder a written response either affirming or reversing the rejection. Denial of a bid reconsideration by the Director is a final agency action. It is not subject to review by the Interior Board of Land Appeals, but is judicially reviewable. We invite comments on the fairness of this bid appeal process.

Section 285.226 through 285.229 [Reserved]

Noncompetitive Lease Award Process

Section 285.230 May I request a lease if there is no call?

Anyone qualified to hold an OCS lease under § 285.106 may request an alternative energy lease from us at any time, except in areas otherwise proposed for competitive lease offerings or excluded by statute from leasing. Such an unsolicited request for a lease may be submitted to conduct either commercial or noncommercial activities authorized in this part. To be valid, the request must include the information equivalent to that required under § 285.213 in response to a Call for Information and Nominations. Specifically, the unsolicited request must contain a depiction of the area requested for lease; a general description of the objectives of the project and the facilities that would be used; a general schedule of proposed activities including those leading to commercial production or other approved operations; available and pertinent data and information concerning alternative energy resources and environmental conditions in the area of interest; certification that the proposed activity conforms with State and local energy planning requirements, initiatives or guidance, if any; and documentation that you are qualified to be a lessee as specified in § 285.107.

In addition, your request must include an acquisition fee of $0.25 per acre for the area requested as required by § 285.502. This fee is proposed at a level intended to be high enough to discourage speculation but low enough not to inhibit interest, allowing lessees to establish a low ratio of lease acquisition costs to total project costs. We invite comments on whether and how any requested information may inhibit requests and on whether this fee will serve its intended purpose.

Section 285.231 How will MMS process my unsolicited request for a noncompetitive lease?

Paragraphs (a), (b), and (c) of this section state that MMS will first determine competitive interest in processing an unsolicited request in order to decide whether to proceed with leasing under a competitive or noncompetitive process. If we find that there is competitive interest in the lease area, we will proceed with a competitive lease process. If we determine that there is no competitive interest, then we will issue a notice of such determination.

If we determine that there is a competitive interest, we will proceed with a competitive process, we will apply your acquisition fee to any bid you submit. If you choose not to bid, we will not refund your acquisition fee. We believe retention of your fee in this case is appropriate, because your original request indicated that your interest was serious and that you intended to pursue development if we carried out the steps needed to issue you a lease. If you submit a qualified bid that does not win, we will refund your deposit, including the amount of the acquisition fee. We invite comment on whether our proposal not to return your acquisition fee if you choose not to bid is appropriate.

Paragraph (d) describes how MMS will proceed if it determines there is no competitive interest. Within 60 days after we issue a finding that there is no competitive interest, the prospective lessee must submit either a SAP for a commercial lease or a GAP for a limited lease. We will review the plan and conduct NEPA and other required analyses before simultaneously issuing the noncompetitive lease or grant and approving the SAP or the GAP.

Our process for conveying OCS sand and gravel by negotiated noncompetitive lease under Public Law 103–421 is a relevant model for the proposed process for issuing alternative energy leases on a noncompetitive basis. The sand and gravel process starts with a request to MMS for a noncompetitive lease. If we determine that the request has potential, we require a NEPA analysis (environmental impact statement or environmental assessment). We inform the requestor of the type of environmental analysis required and provide an estimated schedule for completing the analysis and making the decision whether or not to issue a lease. As part of the NEPA analysis, we undertake or participate in endangered species consultations with the National Oceanic and Atmospheric

Administration and the U.S. Fish and Wildlife Service. We may ask the requestor to fund the NEPA analysis. After the NEPA analysis is completed, we decide whether or not to issue a lease to convey OCS sand and gravel resources. If the decision is made to issue a lease, the specific terms and conditions (e.g., mitigating measures, size and length of lease) are discussed with the requestor and included in the noncompetitive agreement (lease instrument) that we offer. The requestor must sign that agreement to complete acquisition of the lease.

We would treat alternative energy noncompetitive lease issuance and SAP or GAP approval as Federal licenses or permits (as defined by 15 CFR 930.51), and follow the requirements of subsection 307(c)(3)(A) of the CZMA and 15 CFR Part 930, Subpart D, as shown in Table 1. Under the CZMA and its implementing regulations an OCS plan is any plan for the exploration or development of, or production from, any area leased under the OCS Lands Act that is submitted to the Department of the Interior which describes in detail Federal license or permit activities. Since, for leases issued noncompetitively, the lease and SAP or GAP will be processed simultaneously (before the area has been leased), the SAP or GAP cannot qualify as an ''OCS Plan'' under the CZMA implementing regulations. For leases issued competitively, the SAP or GAP will be submitted and processed after the lease has been issued, and in those instances, the SAP or GAP would be processed as an ''OCS Plan'' (as defined by 15 CFR 930.73), and follow the requirements of subsection 307(c)(3)(B) of the CZMA and 15 CFR part 930, subpart E.

We invite comments on the proposed SAP or GAP deadlines and the proposed NEPA and CZMA compliance procedures.

Section 285.232 through 285.234 [Reserved]

Commercial and Limited Lease Terms

Section 285.235 If I have a commercial lease, how long will my lease remain in effect?

This section describes the duration terms for a commercial lease. Commercial leases issued competitively would have three separate phases of lease activity: preliminary term, site assessment term, and operations term. For commercial leases issued competitively, the preliminary term would be the initial 6 months during which the lessee must submit a SAP in accordance with subpart F. If the commercial lease is issued noncompetitively, there is no preliminary term, because lease issuance and SAP approval occur simultaneously. The site assessment term for all commercial leases would begin on the date that we approve the lessee's SAP for a term of 5 years to allow conduct of the approved activities proposed in the SAP. A commercial lease would expire at the end of the site assessment term unless the lessee submits a COP, in form and content satisfactory to us, before the end of the 5-year term. The preliminary and site assessment terms are automatically extended as necessary to allow us to review and approve plans.

The operations term would follow, beginning on the date that we approve the lessee's COP, and would last 25 years to allow development, construction, and ultimately commercial production activities. An operations term longer than 25 years could be established if applicable parties determine that such a term is warranted (e.g., the lessee and project proponent negotiate a power purchase agreement with a 30-year term before the lease is issued).

Section 285.236 If I have a limited lease, how long will my lease term remain in effect?

Limited leases issued competitively would have two phases: preliminary term and operations term. For limited leases issued competitively the preliminary term would be the initial 6 months during which the lessee must submit a GAP in accordance with subpart F. If the commercial lease is issued noncompetitively, there is no preliminary term, because lease issuance and GAP approval occur simultaneously. The operations term for all limited leases would begin on the date that we approve the GAP and continue for a term of 5 years to allow the lessee to conduct the approved activities proposed in the GAP.

Section 285.237 What is the effective date of a lease?

This section describes how we will determine the effective date of a lease. A lease issued under this part must be dated and become effective as of the first day of the month following the date a lease is signed on behalf of the lessor. However, if the lessee submits a written request and we approve, a lease may be dated and become effective as of the first day of the month within which it is signed on behalf of the lessor.

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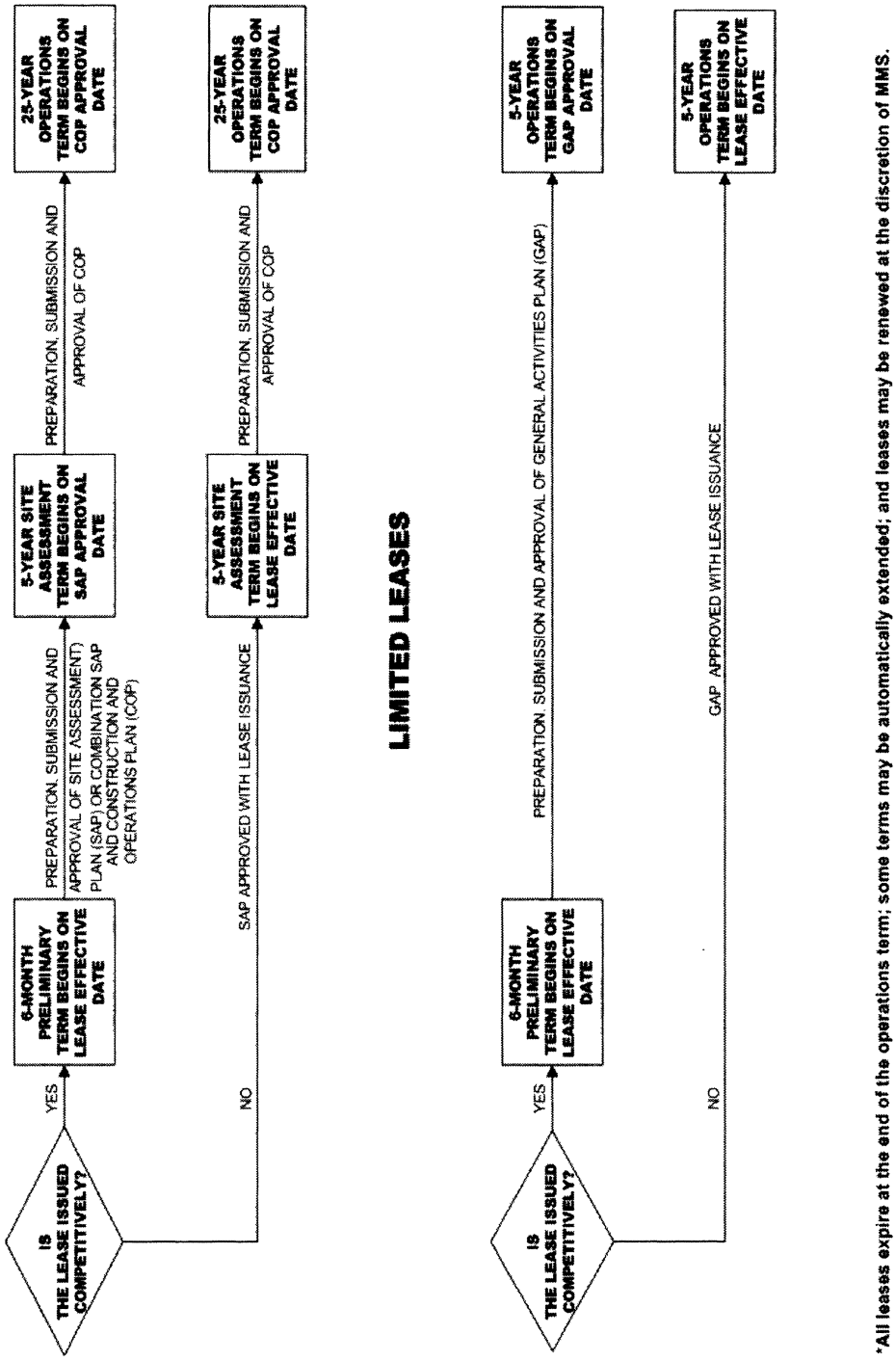
Figure 3. Proposed Alternative Energy Lease Terms*



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Section 285.238 How can I conduct alternative energy research activities on the OCS?

This section describes how alternative energy research activities might be conducted on the OCS. We may set aside areas of the OCS for testing and research activities managed by the U.S. Department of Energy (DOE). This provision was developed following discussions with DOE officials who cited a need for an offshore research area or areas patterned after the European Marine Energy Center, an offshore wave and tidal energy technology testing site in the United Kingdom. The proposed rule would allow us to establish one or more such sites for testing all types of offshore alternative energy technology after giving public notice, coordinating and consulting with relevant Federal agencies and State and local governments, and determining that there is no competitive interest in the area, and comply with all relevant Federal statutes (e.g. ESA, NEPA, MSA).

We believe that such research areas should not preempt potential commercial development and should be administered by DOE under some sort of lease-like agreement rather than directly by MMS. The purposes, issue process, and terms of this kind of lease will be established on a case-by-case basis in negotiations between MMS and DOE. This kind of lease would not be bound by the other provisions of this rule

pertaining to leases. These would not be conventional alternative energy leases, authorizing private developers to conduct commercial or non-commercial activities. These would be a negotiated agreement between DOI and DOE to convey to DOE the access right to conduct alternative energy-related research and development. The leasing arrangements made under this provision should not be confused with the limited lease issued directly through a competitive or noncompetitive process we conduct without DOE involvement. We invite comments on this concept for making areas of the OCS available for alternative energy research.

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative Energy Activities

Overview

Applicability. This subpart addresses issuing ROW grants and RUE grants for OCS alternative energy activities that are not associated with an MMS-issued alternative energy lease. Alternative energy leases include the rights to project easements for cables, pipelines, and other facilities associated with projects on OCS leases as discussed in subparts B and F. It is important to distinguish the grant authority under this part with grant authorities of MMS under other regulations, such as those in 30 CFR part 250. The two examples below are helpful to illustrate the types of activities on the OCS that MMS would authorize with a ROW grant or RUE grant issued under this subpart C.

Example 1: The MMS would issue a ROW grant under this part for activities involving the placement and maintenance of a transmission cable that crosses the OCS and transmits energy produced from alternative energy resources onshore or in state waters. The proposed Juan de Fuca Cable Project—which would install on the OCS a cable several hundred miles long to transport electricity from renewable energy sources in the northwest to the San Francisco area—is a good illustration of an activity requiring a ROW granted under this subpart.

Example 2: The MMS would issue an RUE under this part for activities involving the placement and operation of a facility on the OCS that supports an alternative energy project located on state submerged lands.

The proposed provisions include general requirements for ROW grant and RUE grant applicants, as well as application and issuance procedures. These provisions are similar to the provisions proposed for issuing OCS alternative energy leases.

The MMS would not issue ROW grants and RUE grants for installing site assessment facilities (e.g., meteorological towers) on the OCS. If a company intends to install site assessment facilities, it must acquire a lease under this part.

Competitive and Noncompetitive Processes. As required by subsection 8(p) of the OCS Lands Act, MMS must issue ROW grants and RUE grants through a competitive process unless MMS determines after public notice that there is no competitive interest. This subpart provides for public notice of applications for ROW grants and RUE grants to allow potential competitors and other interested and affected parties to comment on proposals and possibly compete for the ROW grants and RUE grants. However, due to the nature of potential operations on ROW grants and RUE grants, as well as the areal requirements involved, it is unlikely that there will be much, if any, competition. It appears that in most cases even separate geographically overlapping proposals for ROWs and RUEs would not be mutually exclusive. It is therefore unlikely that MMS would conduct an auction of ROW grants or RUE grants. The noncompetitive process for granting ROWs and RUEs would be similar to the noncompetitive leasing process described in subpart B, except there is no acquisition fee and a GAP is required in lieu of a SAP.

In the unlikely event that MMS did determine that there is competition for a ROW or RUE, we would follow the process outlined in subpart B for competitive issuance of leases, with the ultimate terms and conditions of the grant established in a Final Sale Notice. It is more likely that we would receive unsolicited proposals that would be processed after public notice and determination that no competitive interest exists.

As explained above in the discussion of subpart B, because of the competition requirement set forth in subsection 8(p) of the OCS Lands Act, MMS decided to authorize transportation and other ancillary activities associated with an OCS alternative energy lease through the issuance of a project easement as part of the lease rather than providing for separate grants of ROWs and RUEs. We invite comments on the proposed provisions for ROWs and RUEs, as well as project easements.

Plans. As with limited leases, before operations may commence on a ROW grant or RUE grant, the grant holder must submit a GAP to MMS in accordance with subpart F and receive necessary approvals.

Data and Information. Subpart C requires the submission of data and information associated with ROW grant and RUE grant proposals. Subpart A discusses how MMS would handle such data and information, including procedures for withholding material from public disclosure to the extent allowed by law. We invite comments on the handling of data and information.

Coordination and Consultation. The MMS must coordinate and consult with other Federal agencies and State and local governments as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. ESA and MSA). As in subpart B, subpart C provides for coordination and consultation with affected Federal agencies, the Governors of affected States, and the executives of affected localities, including possible participation of State and local governments in task forces or other joint planning agreements with MMS. We invite comments on these provisions.

CZMA Compliance. For purposes of Federal consistency, MMS would treat ROW grant or RUE grants issued through a competitive process as direct Federal agency activities and follow the subsection 307(c)(1) procedures of the CZMA. The MMS would determine if the ROW grant or RUE grant is reasonably likely to affect any land or water use or natural resource of a State's coastal zone and comply with the appropriate Federal consistency regulatory path found in 15 CFR part 930 subpart C.

The MMS would treat ROW grants and RUE grants issued noncompetitively as Federal licenses or permits, which would follow requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930 subpart D. For ROW grants and RUE grants issued noncompetitively, MMS requires that the applicant submit simultaneously its proposed GAP. The GAP is properly characterized as a Federal license or permit under current CZMA regulations since it will describe activities and operations proposed to be undertaken in areas of the OCS that are not under a lease, and therefore cannot qualify as an OCS Plan (as defined by 15 CFR 930.73).

We invite comments on the proposed CZMA compliance procedures.

Areas Available for ROW Grants and RUE Grants. As with OCS alternative energy leases, ROWs and RUEs may be granted on any appropriately platted area that is not located within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine

Sanctuary System, or any National Monument. We invite comments on the areas available for ROW grants and RUE grants.

ROW and RUE Size. The proposed size of a ROW would encompass 200 feet (61 meters) in width, the full length of the cable, pipeline or other facilities, and adjacent areas reasonably necessary for accessory facilities such as power stations for electricity or pumping stations for other energy products (i.e., hydrogen). The size of a RUE would be determined by MMS on a case-by-case basis to include the site of proposed facilities, associated structures, and the areal extent of anchors, chains or other equipment. The proposed ROW and RUE size provisions are patterned after comparable provisions governing mineral activities. We invite comments on the proposed ROW and RUE size provisions.

ROW and RUE Term. A ROW grant or RUE grant is proposed to be in effect for as long as it is properly maintained, continues to support the activities for which it was granted, and is used for the purpose for which it was granted, unless otherwise stated on a case-by-case basis. Since ROW grants and RUE grants are tied to specific activities and purposes, MMS believes that in most cases it will be appropriate to link their term to those activities and purposes rather than setting specific independent terms. However, the proposed provisions do preserve discretion for MMS to set specific terms when called for. We invite comments on the provisions for ROW and RUE terms.

Other ROW and RUE Provisions. ROW grants and RUE grants will be issued on forms approved by MMS and will become effective on the date granted by MMS or as stated in the grant instrument. Financial assurance and rental requirements are provided in subpart E. Additional provisions relating to the administration of ROW grants and RUE grants are set forth in subpart D. We invite comments on these ROW and RUE provisions.

Section by Section Discussion for Subpart C

ROW Grants and RUE Grants

Section 285.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?

This section explains what ROW grants and RUE grants authorize, which includes activities relating to the production, transportation or transmission of electricity or energy from any alternative energy resource that is not produced or generated on an OCS alternative energy lease issued under this part. It further clarifies that you do not need an ROW grant or RUE grant for a project easement authorized under subpart B of this part.

Section 285.301 What do ROW grants and RUE grants include?

This section provides a detailed description of ROW grants and RUE grants, including their dimensions, boundaries, and limitations based on factors such as locations of associated and accessory facilities, as well as taking into consideration environmental and safety concerns. This does not cover RUE grants issued for the alternate use of existing facilities; those are covered in subpart J of this part.

Section 285.302 What are the general requirements for ROW grant and RUE grant holders?

This section cites the proposed regulation pertaining to lease and grant holder qualifications in subpart A. It then lists the express conditions you must meet to be granted a ROW or a RUE so as not to prevent or interfere in any way with the management, administration, or the granting of other rights by the United States. Further, these conditions allow for other users to use or occupy any part of the ROW grant or RUE grant not actually occupied or required for any necessary operations.

Section 285.303 How long will my ROW grant or RUE grant remain in effect?

This section states in general terms the proposed duration of ROW grant and RUE grants.

Section 285.304 [Reserved]

Obtaining ROW Grant and RUE Grants

Section 285.305 How do I request a ROW grant or RUE grant?

This section addresses how to apply for a new or modified ROW grant or RUE grant. A separate application is required for each ROW grant or RUE grant requested. It lists the information the application must contain, including the area requested, objectives, facilities projected to achieve those objectives, a general schedule of proposed activities, environmental conditions in the area of interest.

Section 285.306 What action will MMS take on my request?

This section explains how MMS will process requests for ROW grant and RUE grants based on whether or not competitive interest is determined. It cites the competitive process outlined in § 285.308 and describes the noncompetitive process. The noncompetitive ROW grant and RUE grant process is similar to the noncompetitive lease issuance process, requiring a determination of no competitive interest, negotiation of terms and conditions between grantee and grantor, as well as submission and simultaneous approval of a GAP.

Section 285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?

This section outlines how MMS will determine whether or not there is competitive interest by publishing a public notice (Request for Interest). The public notice would describe the parameters of a project and give potential competitors an opportunity to express their interest. The MMS will make a determination of competitive interest based on comments received in response to the notice. If competitive interest is determined, MMS will initiate the process outlined in § 285.308. If no competitive interest is determined, MMS will follow the process outlined in § 285.306.

Section 285.308 How will MMS conduct an auction for ROW grants and RUE grants?

This section describes how an auction will be held if MMS determines that there is competitive interest for ROW grants and RUE grants. The proposed grant auction process is similar to the auction process for leases.

Section 285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?

This section describes the circumstances under which MMS will issue a grant. The MMS will issue a grant if we approve your GAP and you accept all terms and conditions of the grant.

Section 285.310 What is the effective date of a ROW grant or RUE grant?

The effective date of a ROW grant or RUE grant is established by MMS on the ROW grant or RUE grant instrument.

Section 285.311 Through 285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

Section 285.315 What deposits are required for a competitive ROW grant or RUE grant?

This section cites the deposit requirements of § 285.501 pertaining to ROW grant and RUE grant auctions and provides for the return of a rejected high bid.

Section 285.316 What payments are required for ROW grants or RUE grants?

This section lists the payments required in order for MMS to issue the ROW grant or RUE grant. It states that the balance on an accepted high bid and the first year annual rental as specified in § 285.507 (the greater $5.00 per acre per year or $450 per year) must be paid before MMS will issue the ROW or RUE.

Subpart D—Lease and Grant Administration

Overview

This subpart addresses noncompliance with regulations pertaining to a lease or grant, assignment and designation of operator, and suspension, renewal, termination, relinquishment, and cancellation of leases and grants.

Noncompliance. The requirements that the lessee or grantee must meet to maintain a lease or grant in effect would include plan and reporting requirements (subpart F), payment obligations (subpart E), and procedures for conducting, stopping, and resuming operations or receiving appropriate suspensions from MMS (subpart D). In an instance of noncompliance MMS may issue a notice of noncompliance specifically citing failure to comply and prescribing corrective action. In an instance of noncompliance that poses an imminent threat MMS may issue a cessation order directing the lessee or grantee to cease an activity or activities. Likewise, failure to take corrective action prescribed in a noncompliance order may lead to the issuance of a cessation order. A cessation order does not lengthen the term of the lease or grant or relieve any payment obligations. Also, noncompliance may lead to the assessment of civil or criminal penalties. The MMS believes the proposed noncompliance provisions, in conjunction with the proposed regulatory requirements, are essential to ensure prompt, efficient, and responsible alternative energy activities on a lease or grant. We invite comments on the proposed provisions.

Designation of Operator. The provisions governing designation of an operator to perform activities on a lease or grant are patterned after the regulations at 30 CFR 250.143 through 146.

Assignment. The provisions governing assignment of leases or grants would generally follow the regulations at 30 CFR 256.62, including assignor and assignee responsibilities, procedures for filing transfers, and the effects of an assignment on a particular lease or grant. The MMS believes such requirements are appropriate for all OCS alternative energy leases and grants. We invite comments on these provisions.

Suspension. The proposed rule provides for lease or grant suspensions that would lengthen the duration of the lease or grant to allow completion of activities or continuation of operations. Extensions relating to MMS technical and environmental review of required plans would be automatic. The lessee or grant holder could request suspensions for other purposes and these would be subject to Director approval.

Renewal. The proposed rule provides that a lessee or grantee may request a renewal to conduct substantially similar activities as were originally authorized, and MMS, at its sole discretion, may approve such requests. The renewal provisions also provide timeframes and information requirements associated with renewal requests, as well as guidance on making payments and suspending activities while a renewal request is pending. The length of a renewal will be set by MMS on a case-by-case basis. As explained above in the discussion of lease term provisions in Subpart B, MMS is purposely proposing to retain discretion relating to lease terms and renewals as a tool to promote diligence. We invite comments on the proposed provisions as well as alternatives such as:

(1) Open-ended lease terms;

(2) Shorter lease terms (i.e. 10 years); or

(3) Automatic renewals.

Termination, Relinquishment, and Cancellation. The MMS would be able to cancel leases or grants for failure to comply with the OCS Lands Act and other applicable laws, regulations, and lease requirements; for fraudulent acquisition; and for a continuing and undiminished threat to marine life, property, natural resources, national security or defense, or the marine, coastal, or human environment. Provisions governing terminations and relinquishments of a lease or parts of a lease are also proposed.

Section by Section Discussion for Subpart D

Noncompliance and Cessation Orders

Section 285.400 What happens if I fail to comply with this part?

This section states that MMS can take appropriate corrective action if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, or MMS orders. The MMS may issue to you a notice of noncompliance if it determines that there has been a violation. A notice of noncompliance will tell you how you failed to comply, and will specify what you must do to correct the noncompliance and when you must act. This section also states that if you do not follow a notice of noncompliance, or any other regulation of this part, MMS may issue a cessation order, cancel your lease or grant, assess civil penalties, and in addition you may be subject to criminal penalties.

Section 285.401 When may MMS issue a cessation order?

This section specifies that a cessation order can be issued if you fail to comply with any law or regulation under this part. The cessation order will have a timeframe for you to correct the noncompliance and set forth what measures you are required to take in order to resume activities on your lease or grant.

Section 285.402 What is the effect of a cessation order?

This section gives the details of what you must do when you receive a cessation order. You must cease all activities on your lease or grant for the specified period and you must continue to make all required payments while a cessation order is in effect. A cessation order does not extend the term of your lease or grant for the period you are prohibited from conducting activities. Once again, if MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, your lease or grant may be cancelled.

Section 285.403 [Reserved]

Section 285.404 [Reserved]

Designation of Operator

Section 285.405 How do I designate an operator?

Under this section if you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your specific plan (SAP, COP, or GAP). Once approved in your plan, the designated operator is authorized to act on your behalf and authorized to perform activities necessary to fulfill your obligations under laws and regulations in this part. This section requires you to keep MMS informed if there is any change of status with your designated operator. And if you are the designated operator you must comply with all regulations governing those activities and may be held liable or penalized for any noncompliance. Designation of an operator does not relieve the lessee or grant holder of its obligations.

Section 285.406 Who is responsible for fulfilling lease and grant obligations?

When you are not the sole lessee or grantee, you and your co-lessee(s) or co-grantee(s) are jointly and severally responsible for fulfilling your obligations under the lease or grant. If your designated operator fails to fulfill any obligations under this part, MMS may require you or any or all of your co-lessees or co-grantees to fulfill those obligations.

Section 285.407 [Reserved]

Lease or Grant Assignment

Section 285.408 May I assign my lease or grant interest?

Under this section you can assign all or part of your lease or grant interest. To assign interest, an assignment application must be sent to MMS. The assignment application includes various detailed requirements outlined in this section (i.e. location identification, qualifications, contact information, etc.). The assignment takes effect on the date MMS approves your application.

Section 285.409 How do I request approval of a lease or grant assignment?

This section contains additional details of the assignment requirements.

Section 285.410 How does an assignment affect the assignor's liability?

You are liable for all obligations that accrued under your lease or grant before MMS approves your assignment. If your assignee fails to perform any obligation you may be responsible for corrective action.

Section 285.411 How does an assignment affect the assignee's liability?

The assignee is liable for all obligations once MMS has approved the assignment. The assignee will be responsible to comply with all lease or grant terms and conditions as well as all applicable regulations.

Section 285.412 through 285.414 [Reserved]

Lease or Grant Suspension

Section 285.415 What is a lease or grant suspension?

A suspension is an interruption of the term of your lease or grant. You can request or MMS can order a suspension. A suspension extends the term of your lease or grant for the length of time the suspension is in effect. Activities may not be conducted on your lease or grant during the period of a suspension unless otherwise directed by MMS.

Section 285.416 How do I request a lease or grant suspension?

To request a suspension you must submit a request to MMS containing the details explained in this section.

Section 285.417 When may MMS order a suspension?

Under this section MMS may order a suspension to comply with judicial decrees prohibiting some or all activities under your lease or when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, etc. This section also states that if you have a suspension from an imminent threat you may be required to conduct a site-specific study to resume activities.

Section 285.418 How will MMS issue a suspension?

MMS can issue a suspension order orally, but ultimately it will be written. The written explanation will describe the effect of the suspension order on your lease or grant and any associated activities. The order may also include authorization of certain activities during the period of the suspension.

Section 285.419 What are my immediate responsibilities if I receive a suspension order?

You must take action to comply fully with the terms of a suspension order upon receipt.

Section 285.420 What effect does a suspension order have on my payments?

You must make all payments on your original term obligations until MMS authorizes/orders the suspension. Once the suspension has been issued MMS may waive your payments during the suspension period.

Section 285.421 How long will a suspension be in effect?

The time frame for a suspension will mostly be outlined by MMS. However, if you request a suspension, MMS will not approve a suspension request longer than 2 years.

Section 285.422 through 285.424 [Reserved]

Lease or Grant Renewal

Section 285.425 May I obtain a renewal of my lease or grant before it terminates?

The MMS may approve a renewal request to conduct substantially similar activities that were authorized under the original lease or grant. The MMS will not approve a renewal request that involves development of alternative energy not originally authorized in the lease or grant. We invite comments on establishing standard criteria for consideration in lease renewal decisions. For example such criteria could include:

(1) Design life of existing technology;

(2) Availability and feasibility of new technology;

(3) Environmental and safety record of the lessee;

(4) Operational and financial compliance record of the lessee; and

(5) Competitive interest and fair return considerations.

Section 285.426 When must I submit my request for renewal?

This section provides a timeframe for when you must request a renewal. You must submit no later than 180 calendar days before the termination date of your limited lease or grant, and no later than 2 years before the termination date of the operations term of your commercial lease.

Section 285.427 How long is a renewal?

The MMS will set the term of a renewal on a case-by-case basis not to exceed the original term of the lease or grant.

Section 285.428 What effect does applying for a renewal have on my activities and payments?

If you request a renewal you must continue all payments and may continue to conduct your approved activities until your lease expires or until we make a determination on your request.

Section 285.429 through 285.431 [Reserved]

Lease or Grant Termination

Section 285.432 When does my lease or grant terminate?

Your lease or grant terminates upon the expiration of the applicable term, upon cancellation by the Secretary, or upon approval of your relinquishment.

Section 285.433 What must I do after my lease or grant terminates?

After your lease or grant terminates, you must make all payments due and perform any other outstanding obligations under the lease or grant (including decommissioning).

Section 285.434 [Reserved]

Lease or Grant Relinquishment

Section 285.435 How can I relinquish a lease or a grant or parts of a lease or a grant?

To surrender a lease or grant you must submit a relinquishment application to MMS. The application will include the information required in this section such as identifying information and contact information. You are responsible for all payment obligations until the relinquishment is in effect.

Lease or Grant Contraction

Section 285.436 Can MMS require lease or grant contraction?

The MMS may review your lease or grant area, at intervals no more frequent than every 5 years, to determine whether the lease or grant area is larger than needed to develop the project and manage activities in a manner that is consistent with the provisions of this part. MMS will notify you of its proposal to contract the lease or grant area and give you the opportunity to present orally or in writing information demonstrating that you need the area in question to manage lease activities consistent with these regulations. Prior to taking action to contract the lease or grant area, MMS will issue a decision addressing your contentions that the area is needed.

Lease or Grant Cancellation

Section 285.437 When can my lease or grant be canceled?

The Secretary may cancel your lease or grant if you obtained it fraudulently, failed to comply with laws and regulations, for national security, or if your activities cause serious harm or damage to natural resources, life, property, etc. In certain circumstances, the Federal government may provide compensation if your lease is cancelled.

Subpart E—Payments and Financial Assurance Requirements

Overview

This subpart proposes a payment structure for alternative energy leases that complies with subsection 8(p)(2) of the OCS Lands Act. In part, that subsection added by the EPAct directs the Secretary to establish royalties, fees, rentals, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or ROW granted for alternative energy activity on the OCS. As with other OCS programs, we intend to collect this fair return through a combination of payments. In addition to up-front acquisition fees or bonus payments for alternative energy leases, we propose to charge acreage-based rentals for technology assessment activities on limited leases. On commercial leases we propose to charge acreage-based rentals for the pre-development phases of alternative energy production ventures and their ancillary facilities, and a share of revenues from the alternative energy production phase in the form of an operating fee. After reviewing guidance available from other alternative energy leasing systems, we summarize internal analysis that guided our initial proposed payment amounts. Then we describe how we chose to structure the components of those payments in the section-by-section discussion.

Payments to other landowners. While developing the initial financial terms proposed in this rule, we examined comparable domestic and foreign alternative or renewable energy programs. For renewable energy projects like wind farms on private lands onshore, leasing the land or obtaining easements is a common arrangement. Payments on such leases are structured in numerous ways that can include a single up-front payment, a fixed annual payment, a share of the revenues from the project, or a combination of such payments. In some cases, a minimum annual payment per acre or per turbine may be assessed, especially during periods prior to development or during non-activity. Often, lease terms will include a royalty payment or operating fee based on power generation or revenues.

Our research indicates that for projects commissioned in the 1998–2005 period, payments to landowners on privately leased lands for wind power generation tend to be fixed annual payments in the range of $1,500 to $6,000 per turbine, or minimum rents of $1,500 to $5,000 for each megawatt of nameplate capacity. This is equivalent to royalty payments on private leases generally ranging from 1 percent to 4 percent or more of gross revenues on an annual basis, with lower rates seen in more remote areas and higher rates in areas nearer to markets or areas with other competing land uses. Sometimes the lease payments will be set lower in the initial years of operation, and escalate in later years after capital costs have been recovered. Onshore wind energy development projects may also be subject to annual property taxes assessed by local governments on the value of improvements made to the property. These rentals and fees compensate the landowner for the lessee's use of the land. Such factor payments are an essential element in achieving efficient allocation of the available factors of production for any good. They also confirm that alternative energy projects, notwithstanding their prospective social benefits, can be expected to support payments for use of public land.

There is a limited amount of legislative history that would give insight on the type of alternative energy payment structure intended by the Congress. For this reason, we reviewed alternative energy regulatory regimes implemented by other governmental agencies in the United States and overseas.

We found that the programs employed overseas, in countries with the most mature offshore wind industries, such as Denmark, Germany, and the United Kingdom, were fundamentally different from the program authorized by the EPAct. Hence, they generally do not offer the best comparisons for determining appropriate financial terms for our domestic offshore program. In Denmark, for example, which has the most extensive offshore wind program in the world, operators are not charged rentals or operating fees. On the other hand, annual rent provisions based on production are used by the United Kingdom and are part of the required lease terms for wind leases issued offshore Texas in state submerged lands. The United Kingdom requires an annual rent payment based on two percent of revenue. Between 2005 and 2007, the State of Texas issued the nation's first offshore wind energy leases on both a competitive and non-competitive basis that included annual fees per tract paid until production and then production royalty schedules that would increase payment rates from 3.5 percent to 6.5 percent of revenue over the productive life of the lease.

For commercial onshore wind facilities sited on Federal lands managed by the Bureau of Land Management (BLM), the operator pays a fixed annual payment. That payment is derived from a formula that effectively captures a share of expected revenues based on capacity using fixed parameters; i.e., a 3 percent royalty, a capacity factor (30 percent), and an assumed average electricity price of $0.03 per kilowatt hour. This formula generates a fixed fee for all lessees of $2,365 per 1000 kilowatts (kW) (or 1 megawatt, MW) of anticipated installed capacity. The BLM minimum rent is phased in over the first three years at 25 percent for year 1, 50 percent for year 2, and 100 percent for year 3 and thereafter. The full minimum rental fee is required after the start of commercial operations and is due annually in

advance on a calendar year basis. In summary, we found that most financial requirements for wind energy leases are designed with relatively modest lease terms, which provide a market-based and fair return to the owners of the leased lands, but which are not so high as to discourage development of alternative energy projects. The proposed rates in this rule are in line with financial terms used elsewhere and would constitute a small fraction of the expected offshore alternative energy project costs. We request your comments on whether or not information from other sources supports this conclusion. If not, please provide such alternative information.

Potential OCS Feasibility. We supplemented this guidance with a detailed economic analysis of potential alternative energy projects on the OCS. See Final Summary Report, ''MMS Offshore Renewable Energy Program—Cost-Benefit Analysis to Support the Rulemaking Process for 30 CFR 285,'' Industrial Economics, Incorporated, October 18, 2007. This report is available from MMS upon request. Part of the rationale for the payment levels proposed herein was drawn from the cost-benefit analysis carried out for this rule. This analysis considered an alternative energy development forecast of 73 wind, wave and subsurface water current projects that could enter the operations term within the 20-year period, from 2007 through 2026, assuming that development would be economically viable.

The economic analysis evaluated four different payment scenarios that utilize a range of rental and operating fee magnitudes and forms from which we are likely to choose. These scenarios consisted of a baseline payment scenario in which no payments would be required and 3 additional scenarios reflecting progressively higher rental and royalty terms, some phased in over time. The high payment scenario incorporates a step scale for rental that may be useful if we found it necessary to encourage diligence during the site assessment phase or to help ensure a fair return. A step scale formulation for the operating fee also may be used for a different reason. During production, the step scale allows lessees to keep more of the revenues in early years to help recover project capital costs and for the repayment of debt, in comparison to a fixed operating fee set around the mid-point of the step scale levels. This step scale formulation tends to increase short-term cash flow, thereby raising the project's rate of return and hence profitability.

Results from the economic analysis show that the same number of projects (55) would be viable (i.e., we estimated a nominal internal rate of return of at least 11 percent) under the baseline (no payments), low and intermediate payment scenarios. Three of those projects (approximately five percent) became nonviable under the high payment scenario. Therefore, a lessee's decision to develop a wind, wave or subsurface water current project would only be slightly sensitive to our imposition of anticipated payments in the high payment scenario, and even then only in a small proportion of all cases. A detailed technical report documenting this forecast as well as the results of the cost-benefit analysis may be viewed at *www.mms.gov.*

In addition to the economic analysis, we carried out an ancillary and more focused income analysis to estimate how the allocation of profits between lessee interests and the government would vary under the low, intermediate and high payment scenarios. We evaluated 3 hypothetical wind energy projects; one with an installed capacity of 150 MW assumed to start power generation in 2020 and two with an installed capacity of 500 MW, one assumed to start power generation in 2010 and the other in 2020. Using cost estimates from trade periodicals and Internet sites and choosing revenue levels (from power sales, renewable energy credits, capacity payments, and credits for providing ancillary services) that yield minimally profitable project economics (internal rate of return of 10 percent), we compared project owner and government shares of net revenue. We found that the payments assumed in the intermediate payment scenario allocated approximately 40 percent of the net revenue to the government for the 2010 project. For the two 2020 projects, the government share fell to about 15 percent (with internal rates of return above 12 percent) in the intermediate payment scenario and rose to 40 percent only in the high payment scenario. This exercise supports the view that the government receipts, with the payment schedules we considered, should not discourage truly feasible alternative energy projects. Further, while the initial offshore alternative energy developments could be comprised of a significant proportion of marginal projects, the long term profit outlook is brighter, because future lease owners will have the opportunity to install newer and more efficient equipment. We base this optimistic outlook on an expectation that most of these future leases should be able to utilize newer technology in shallow water locations near major metropolitan areas and sell power for generally higher electricity prices than will be the case for the initial alternative energy leases issued on the OCS.

External Benefits. In choosing initial acquisition, rental, and operating fee amounts, we considered that the cost to society for generating electricity has two components, the internal cost to the generator and the external cost in terms of pollution. External costs attributed to environmental degradation are less for electricity generated with renewable energy resources than from conventional fuels.

A report issued by the European Wind Energy Association in May 2005, titled *Support Schemes for Renewable Energy—A Comparative Analysis of Payment Mechanisms in the European Union*, discusses the issue of external costs and presents findings applicable to this discussion. Page 11 of the report states that:

> The European Commission's ExternE project on external costs estimated that the cost of producing electricity from coal or oil in the European Union would double, and the cost of electricity production from gas would increase by 30 percent, if external costs, in the form of damage to the environment and health, were taken into account.

In contrast, the external cost of generating electricity from renewable energy sources is much less significant, accruing from the emissions of vessels and equipment used during the construction, operation and decommissioning of the generation facilities. Clearly, external costs to society may be reduced by substituting renewable energy for fossil fuels.

However, avoided damages are not easily assessed for individual projects, and the exact terms of a payment structure that would properly credit the benefits to renewable energy developers is not known. In the U.S. there are already important categorical incentives which would apply to all onshore and offshore wind energy production projects. According to Title 26—Internal Revenue Code, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart D, Sec. 45(a) and 45(d)(1), wind energy generators may claim a production tax credit (PTC) for a qualified facility during the 10-year period beginning on the date the facility was originally placed in service. The credit amount for 2007 was $0.02 per kilowatt-hour, according to the Internal Revenue Service's Internal Revenue Bulletin 2007–21, Notice 2007–40, published on May 21, 2007. Wave and subsurface water current projects are not eligible to

claim the credit. Aside from the PTC, renewable portfolio standards established by many states encourage offshore alternative energy activities by requiring that part of the electricity sold by a retail electricity supplier be generated from renewable sources. This raises the demand for alternative energy and serves to make the related projects more profitable.

We view the existence of such provisions as the principal compensation to project owners for the social benefits of their alternative energy projects, and want to ensure that our payment proposals do not seriously undermine the purpose of that compensation. To understand the financial implications of both our payment proposals and the PTC, we quantified the economic significance of both elements as part of the feasibility analysis mentioned above. Recall that we found that the forecasted number of profitable projects, 55 out of 73,would be the same under both the baseline no payments case (i.e., rentals or operating fees) and the case where the rental and operating fee levels proposed here would apply to initial OCS alternative energy projects (for the high case payments scenario, 3 of the 55 projects became unprofitable). In contrast, we estimate that only 31 of those 73 projects would be economically viable without the PTC. That is, introducing payments at the levels proposed in this rule has no apparent effect on economic viability over the range of project types and sizes considered in our analysis, while eliminating the PTC would convert 24 of these 55 otherwise profitable projects from economically viable to nonviable.

These findings lead to the expectation that the size of the proposed fee payments would be a small portion of the value of the PTC. To confirm this expectation, we focused on a set of these projects already identified as being most sensitive to added costs: a representative sample of 12 of the 24 projects in our analysis that could be made unprofitable if the PTC were eliminated. For each project, we calculated both the current and discounted values of the fee payments and the PTC, for both the 10-year period that the PTC would be in effect as well as over the entire life of the project. For these four sets of cases, we found that the ratio of the value of the fee payments to that of the PTC varied across projects from a low of about 5 percent to a high of about 15 percent. So, our analysis of the data confirmed our expectation that the fee payments we propose would not be a significant portion of the value of the PTC, that is, it would not reduce the PTC by more than 15 percent in any case and, in most cases, a 5 to 10 percent reduction in the effective net value of the PTC could be expected. Thus, we conclude that the proposed size of our payments would not adversely affect the rate of offshore alternative energy development. We request comments on whether the results of this analysis accurately characterize the basic economics of anticipated OCS alternative energy projects.

Another part of the rationale for the payment scheme we propose for alternative energy lessees relates to the societal benefits of these projects compared to traditional OCS oil and gas projects. By requiring lower payments for alternative energy leases, we help electricity generators reduce internal costs, thereby improving the economics of electricity generation from alternative energy sources. At the same time, based on the analysis discussed previously, we do not expect these payments to materially affect the economics of alternative energy projects. It should be a rare occurrence that the decision to develop an alternative energy project depends on the level of the modest rent and operating fees under consideration. Yet, these relatively lower payment terms should still ensure a fair return to the public, when benefits resulting from reduced external costs to society are taken into account. Additional discussion of the proposed payment terms and their effect on project economics continues under § 285.505 of the preamble.

An important goal of the first phase of our proposed alternative energy program is to provide financial terms that do not discourage the alternative energy industry from demonstrating the practicality of alternative energy production on the OCS. Thus, we propose to collect payments of relatively small size initially from a nascent OCS alternative energy industry. After successful demonstration of the commercial viability of that activity, we may decide to adjust financial terms. To provide for that adjustment, these proposed regulations would authorize us to consider revisions to financial terms for established projects based on their operating experience and for new projects based on prevailing and anticipated conditions in the energy market.

Financial Assurance Requirements

This portion of the subpart is intended to minimize the risk of financial loss to the Federal Government if lessees, operators and grant holders default in fulfilling their obligations under this rule and other applicable laws or regulations. The proposed rule would fulfill that purpose in two ways: through the prequalification of lessees, operators, and grant holders, and providing sufficient financial collateral to assure lessee, operator, and grant holder obligations can be fulfilled by a third party in the event of default. The rule anticipates different requirements for ranges of activities for commercial production leases, limited leases, ROW grants, and RUE grants.

The financial assurance portion of the proposed rule is divided into four general areas:

(5) Basic financial assurance requirements for commercial leases;

(6) Financial assurance for limited leases, ROW grants, and RUE grants;

(7) Requirements for financial assurance instruments; and

(8) Changes in financial assurance.

Basic Financial Assurance Requirements for Commercial Leases

The financial assurance requirements for commercial leases are set forth first in the proposed rule. Generally, the financial assurance required by MMS will be used to ensure the performance of the following lease obligations:

(a) The projected amount of rentals and other payments due the Government over the next 12 months;

(b) Any past due rentals and/or other payments;

(c) Other monetary obligations; and

(d) The costs, as estimated by MMS, of lease abandonment and cleanup.

Before MMS will issue a commercial lease, the prospective lessee must provide either a lease-specific $100,000 bond; alternative financial assurance that the Regional Director determines protects U.S. interests to the same extent as the bond; or evidence that your designated lease operator has provided commensurate financial assurance.

Additional bonds/financial assurance are required before the MMS will approve a Site Assessment Plan (SAP) or a Construction and Operations Plan (COP). The amount of this additional bond/financial assurance will be determined by MMS and be based upon the type and number of facilities to be used in your planned activities.

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

The proposed rule provides that when you obtain a limited lease, ROW grant or RUE grant, you must post a lease or grant-specific bond or other approved financial assurance in the amount of $300,000. Unlike commercial leases, further financial assurance is not automatically triggered by applications

for activity such as the Site Assessment Plan and the General Activities Plan. However, MMS may require you to increase your level of financial assurance as activities progress on your limited lease or grant.

Requirements for Financial Assurance Instruments

This portion of the proposed rule lays out the provisions that must be included in any financial instrument you use for financial assurance. The financial instrument must be payable to MMS upon demand, on a form approved by MMS, and guarantee compliance with all terms and conditions of the lease or grant. Surety bonds must be issued by a surety listed in the current Department of the Treasury Circular 570.

This portion of the proposed rule also provides guidance on the types of financial instruments that MMS will accept.

Changes in Financial Assurance

This portion of the proposed rule discusses topics such as termination or reduction of financial assurance instruments and reduction of required bond amounts. Also covered are topics such as forfeiture of bonds and MMS requirements for supplemental bonds.

Revenue Sharing

This proposed rulemaking also addresses the requirements related to the new subsection 8(p)(2)(B) of the OCS Lands Act (43 U.S.C. 1337(p)(2)(B)), which describes how revenues received by the Federal Government as a result of payments from alternative energy projects or alternate uses of existing facilities would be shared, in some cases, with affected States. Proposed §§ 285.540 through 285.541 set out a process for implementing revenue sharing from alternative energy projects. We invite your comments on the following issues associated with that implementation process.

1. The law does not specifically address the eligibility of a State with submerged lands within 3 miles of the edge of a project but with a coastline more than 15 miles from the geographic center of that project.

> The Secretary shall provide for the payment of 27 percent of the revenues received by the Federal Government as a result of payments under this section from projects that are located wholly or partially within the area extending three nautical miles seaward of State submerged lands. Payments shall be made based on a formula established by the Secretary by rulemaking * * * that provides for equitable distribution, based on proximity to the project, among coastal states that have a coastline that is located within 15 miles of the geographic center of the project.

Has MMS interpreted the pertinent language of EPAct in a manner that is reasonable and provides the most equitable share of revenue to adjoining states?

2. Using the proposed methodology for determining project area and the geographic center of the project, the share of each eligible State would be independent of the location of any concentration of project activities. Should the formula for distributing revenues allow the flexibility to compensate for a situation in which a qualified project area lies off more than one State but in which the vast majority of facilities and activity are concentrated off a single State? For example, a project area might be 9 miles long and straddle the administrative boundary between two States, with the first phase of the project constructed at one end or, alternately, the completed project might leave perhaps 90 percent of the facilities at one end. The proposed methodology would assign the same State shares, regardless of where the project activities were concentrated. One way to compensate for this would be to identify one or more ''special project areas,'' which could include only the geographic focus of generation activities, would have their own geographic centers, and would be used only for determining shares of operating revenues. (Creation of such special project areas would not affect eligibility but would alter revenue shares.) Is this a reasonable approach for MMS to take? Is there another approach permitted by law that would achieve the same purpose?

3. Should the rule restrict MMS's authority to redefine project areas with regard to time or other factors? For example, should such redefinitions be limited to a period at the end of each fiscal or calendar year? Or should the original project area remain fixed, irrespective of changes in the acreage used for project activities?

4. Is the inverse distance formula proposed for this rule a reasonable method for achieving an equitable distribution of revenues? If not, are there alternative formulas that would be superior? If so, what makes them superior?

5. What other issues should MMS consider in this rulemaking?

Section by Section Discussion for Subpart E

Payments

Section 285.500 How do I make payments under this part?

This section explains how persons would submit application and filing fees, as well as payments due under the provisions of leases, easements and ROW grants. Some payments would be made electronically through the Pay.Gov Web site at: *https://www.pay.gov/paygov/* other payments will be made directly to the Minerals Revenue Management office in Denver, Colorado. We plan to promulgate subsequent regulations to describe specific payment procedures for the alternative energy and alternate use program. Until that occurs, we propose that payment procedures for this program follow the model of the oil and gas program cited at 30 CFR 218.51.

We request suggestions concerning how the payment procedures should be structured and what the content of alternative energy payment procedures should include.

Depending on the method of award we select for issuing a lease or grant, persons that seek access to the OCS for alternative energy activities may be required to submit a bonus or other up-front cash payment for a lease or grant issued competitively or an acquisition fee for a lease or grant issued noncompetitively. We then propose that lessees pay rental during the preliminary and site assessment terms. During the operations term, commercial lease holders would be obligated to pay operating fees or a rental. We propose no operating payments for limited leases, easements and ROW grants because they do not produce. Only rental would be paid by limited lease holders for each year of a specified lease term, and be paid by grantees for as long as an easement or right-of-way is in effect.

Section 285.501 What deposits will MMS collect for a competitively issued lease, ROW grant, or RUE grant?

This section provides the deposit requirements for persons submitting a bonus or other cash payments on a competitive lease, ROW grant, or RUE grant. Sealed bids would be offered with a deposit of 20 percent of the bid amount, unless specified otherwise in the Final Sale Notice. Bidders participating in ascending auctions would deposit a cash payment as established in the Final Sale Notice. Procedures for submitting the balance owed on accepted high bids would also be established in the Final Sale Notice.

We traditionally require a 20 percent deposit on sealed bids submitted in oil and gas sales to assure bids are genuine, but will consider proposals for setting a different deposit requirement for alternative energy lease sales. Historically, a small number of bidders have failed to execute an oil and gas lease within the allotted time period. In those situations the bidders forfeit their deposits. MMS is considering implementation of a similar requirement for alternative energy competitive auctions.

We request your comments on setting the deposit amount and deposit forfeiture requirements, including the extent to which these amounts and requirements should be related to the type of auction format employed.

Section 285.502 What initial payment will MMS require to obtain a noncompetitively issued lease, ROW grant, or RUE grant?

Developers are allowed to submit unsolicited applications for alternative energy leases. We are required by law to give the public notice of such applications, and determine if other parties are interested in competing for the lease rights. In cases where there is no competitive interest, we may issue a lease to the applicant. We propose an acquisition fee of $0.25 per acre for noncompetitive leases. For example, an application to lease a single OCS block of 25 square miles in area, or 16,000 acres, would be submitted with an acquisition fee of $4,000. However, a fee that small will not necessary provide a fair return to the United States for use of the seabed. If we decide to issue a noncompetitive lease, we are considering whether to require an additional payment equal to the difference between the minimum bid we would have set for a competitive sale offering in the same area and the acquisition fee. In this way, the sum of the payments made to acquire the lease noncompetitively will provide a similar return to the government regardless of whether the lease is issued competitively or noncompetitively. We seek comments on the adoption of this alternative approach.

Following our determination that there is competitive interest, a lease or grant sale would be held. If the applicant submits a qualified bid, the acquisition fee would be applied to the applicant's bid. Otherwise, we would not refund the acquisition fee.

We are not proposing to require an acquisition fee payment when applying for a noncompetitive ROW grant or RUE grant. We invite comments on whether such a payment should be included in the final rule. We request comments concerning whether the size and treatment of acquisition fees proposed in this section is appropriate and whether or not it would discourage expression of any legitimate interest in a possible alternative energy lease.

Section 285.503 What rentals will MMS collect on a commercial lease?

This section would provide a rental rate of $3 per acre per year for a commercial lease, unless we specify a different rate in the Final Sale Notice for leases issued on a competitive basis. When we issue a commercial lease noncompetitively, the elements of the rental and any adjustments to it would be given in the lease instrument. Rental for the first 6 months, or preliminary term, would be due when we issue the lease. Rental for the next 12 months and for each subsequent year during the site assessment term would be due at the beginning of the year for the entire lease area until approval of the COP, which begins the operations term and when the obligation to pay operating fees would begin. We propose to apply the same interest charge to late rentals from alternative energy leases as we do to late payments from oil and gas leases under 30 CFR 218.54.

We may specify the payment of rental during part, or all, of the operations term instead of or in addition to operating fees, in the Final Sale Notice for leases issued on a competitive basis. We reserve this right partly to make any adjustments that may be needed in connection with the operating fee structure we propose in § 285.505.

For example, a situation could arise where a lease is developed in phases, and both rental and operating fees could be due on different parts of the commercial lease during the same time period. In this case, rental would be paid on portions of the lease not authorized for commercial development, and operating fees could be required for the portion of the lease with commercial operations.

A variety of considerations are behind our proposed baseline $3.00 per acre rental value, subject to any change in the Final Sale Notice for competitively issued leases. In general, a rental payment serves several purposes. It compensates the Federal government for the opportunity cost of precluding other incompatible uses of the OCS area. Also, it serves as a holding cost that encourages the lessee to expedite activity on the area. Under some circumstances, we may determine that charging progressively higher rental rates over time would be desirable to obtain a fair return and perhaps be necessary to induce diligent operations. In those cases, we may adopt a rental rate schedule instead of a constant rental rate.

The proposed baseline commercial alternative energy lease rental rate of $3 per acre would be less than one-half of the lowest oil and gas rental rate of $6.25 per acre for oil and gas leases in shallow waters of the Gulf of Mexico issued in 2007. Rentals, as well as operating fees, proposed in these regulations for commercial alternative energy leases would be lower than those for other uses of the OCS such as oil and gas development, in part to encourage industry to invest in offshore alternative energy technology. Another reason for setting lower payment rates for commercial alternative energy leases than for oil and gas leases is the lower environmental costs of generating electricity with renewable energy, rather than fossil fuels such as oil, gas and coal, as discussed in the Overview to this part. Since external costs of electricity generated from renewable energy are much lower than external costs of electricity generated from fossil fuels, we propose to provide for relatively lower payments by alternative energy developers to encourage investment.

We request comments concerning whether the baseline rental fee proposed in this section would be appropriate for lessees and fair to the public.

Section 285.504 What rentals will MMS collect on a limited lease?

This section would provide a $3 per acre per year rental rate for a limited lease, unless a different rate is specified in the Final Sale Notice for leases issued on a competitive basis. When we issue a limited lease noncompetitively, the rental and any adjustments to it would be established in the lease instrument. Rental for the first 6 months would be due when MMS issues the lease. Rental for the next 12 months and for each subsequent year would be due at the beginning of the year for the entire lease area through the end of the lease term. We propose to apply the same interest charge to late rentals from alternative energy leases as we do to late payments from oil and gas leases under 30 CFR 218.54. These rental requirements are equivalent to those on a commercial alternative energy lease during the preliminary and site assessment terms, before activity begins for constructing and producing energy.

We request comment on whether there is any valid reason to charge a different rental for limited leases than for commercial leases.

Section 285.505 What operating fees will MMS collect from a commercial lease?

This section provides that the annual operating fee payments for commercial alternative energy leases would be determined by a formula related to the anticipated, rather than actual, gross value of the electricity generated on the lease. Upon approval of a COP for a commercial lease and commencement of operations for commercial projects, rental payments typically would cease. We propose to then invoke the production charge in the form of a capacity-based operating fee payment. This operating fee would not apply to limited leases as those leases do not allow commercial production of energy. These payments would be due on a schedule established in the Final Sale Notice and lease instrument. We also propose to apply the same interest charge to late operating fees from alternative energy leases as we do to late payments from oil and gas leases under 30 CFR 218.54. We propose the following formula for determining the annual operating fee:

F		M		H		c		P		r
(annual operating fee)	=	(installed capacity in units of production)	*	(hours per year)	*	(capacity factor)	*	(power price per unit of production)	*	(operating fee rate)

The operating fee rate r, like a royalty rate, is one element in the formula. The other elements serve as reasonable and easily observable proxy measures of the output and price related to a specific operation. We propose that the fee rate be set equal to 1 percent during the first two years of the operations term, and would be set equal to 2 percent for the third and remaining years of the operations term, unless we specify otherwise in the Final Sale Notice for competitively issued leases. We would establish initial values for other elements in the formula, such as the power price and capacity factor, and provide for periodically revising the initially selected values based on new information. When we issue a commercial lease noncompetitively, the elements of the operating fee and any adjustments to it would be given in the lease instrument.

Using the proposed payment terms, government lease revenues for a commercial lease in any given year would depend on the phase of the project and the relevant prices as designated by MMS for electricity in the Region. The proposed lease rental and operating fee payments can be illustrated with an example for wind energy. An offshore wind lease, issued non-competitively, on 12,000 acres of the OCS would be required to pay $36,000 to the Government annually based on a charge of $3.00 per acre in rent during the site assessment term under § 285.503. Once we approve the COP, the operations term begins, and operating fees typically are payable. For a lease with an installed capacity of 200 megawatts and an operating capacity factor of 0.38, i.e., 38 percent, the operating fee payable to the Government would be about $333,000 during the first two years of the operations term and about $666,000 annually thereafter if the applicable electricity price was $50 per megawatt hour. Additionally, if the approved project plan has easements covering 2,000 acres, an additional $10,000 in rentals ($5.00 per acre) would be collected per year under § 285.506.

During the production phase of a project, a capacity-based operating fee, rather than a production amount or value based fee, has several advantages. The capacity based fee avoids detailed audits of production sales accounts, and mitigates subsequent disagreements and possible legal actions which entail a significant expense to both lessees and the government. However, applying it as well during the pre-production construction phase that begins with approval of the COP appears both inappropriate and unnecessary, since imposition of a simple rental fee can better serve the objective in that period of encouraging diligent efforts to begin production.

In either the pre-production construction or production phase, at least two reasons can be cited for employing a rental rate or operating fee higher than the rental rate charged during the preliminary and site assessment period rental rate. First, we would only approve a COP for a project that has the potential for commercial operations. Hence, a lease with proven resource potential is likely more valuable, and should command a higher payment. Second, you will be using more intensively the leased area when the project moves from the site assessment phase to construction work phase. Hence, while you are not depleting a public asset such as oil or gas, you are causing increased disturbances on public property which makes a higher payment appropriate. The operating fee rate in the first 2 years of the operating term, even at the reduced level proposed, serves as that increased payment while avoiding confusion with the rental applied before the COP. Also, phasing in the operating fee is similar to the BLM fee for onshore wind ROWs for projects, with the minor difference being that a BLM grantee is charged 25 percent of the full operating fee in the first year and 50 percent in the second after approval of a project, instead of 50 percent in both years as we propose.

Prior to holding a lease sale, a high level of uncertainty exists in the estimation of the amount of energy a given facility could generate and in the evaluation of the economic viability of a project planned for an area to be leased. Although we have included a baseline 2 percent fee rate in the proposed regulation, subject to revisions in the Final Sale Notice, this rate is not necessarily the appropriate fee rate for every wind, wave, subsurface water current or other renewable energy project that might be developed on the OCS. However, in the interests of reducing uncertainty, where possible, for pioneering OCS alternative energy projects and stimulating investment in such projects, we intend to use a 2 percent fee rate for the first commercial alternative energy leases issued on the OCS after the first 2 years of the operations term.

For leases issued competitively, we propose that an alternative energy lease on the OCS may be issued, depending of the bidding system, with constant or sliding operating fee rates. With a sliding fee rate, the operating fees could automatically change over the life of a lease according to a sliding scale schedule specified in the Final Sale Notice and/or lease instrument. The term *sliding* in this context applies generally to any change in the operating fee rate over time or other increment. A sliding fee rate could provide for future adjustments based on the analysis of either market data or actual project data. Another example would be a case where the fee rate used to calculate the operating fee changes in a specific manner at predetermined time intervals. If a sliding operating fee rate is used as a bid variable in an auction, MMS

would specify a mathematical function to determine changes to the value of the operating fee over time and the function variable which would be bid. The sliding operating fee in any year would be the amount derived from this function in conjunction with the operating fee formula.

If the operating fee rate is constant, it could only vary from one period to the next following approval of a request for reduction or waiver. In addition to a predetermined sliding fee process, we reserve the right to review relevant electricity price information and capacity factor information as they relate to the formula, established in subpart E, and adjust the values used in the operating fee formula accordingly. Upon the completion of the first year of commercial operations on the lease, MMS may adjust the capacity factor as necessary (to accurately represent a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity). Thereafter, MMS may adjust the capacity factor (to accurately represent a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity) no earlier than the completion of the sixth year of operation, or any five year period thereafter. We request comments on the frequency of the review and adjustment of the capacity factor.

In either the case of a competitively or noncompetitively issued lease, we may reduce or waive fee rates under the process given in 30 CFR 285.509. We would establish operating fees for activities not related to the generation of electricity, such as the generation of hydrogen, on a case by case basis through the lease sale process. Operating fees and other payment requirements for activities conducted as an alternate use of an OCS facility, such as an oil and gas platform, previously authorized under the OCS Lands Act, are explained in Subpart J of these proposed regulations.

In addition to the capacity-based fee approach being proposed, MMS also considered other methods for computing the operating fee. They included fees based on the actual amount or value of production either in the current year or in prior years, fees that varied depending on the characteristics of the project (e.g., water depth, distance from shore, output efficiency, etc.), fees that involved a combination of rentals and output-based charges, or some combination of these options. We are requesting comments on whether the proposed capacity-based operating fees are always in the best interests of the alternative energy program from the perspective of both lessees and the Government, or whether there are circumstances where a different type of fee would be more appropriate. In the latter case, we would like you to identify what those cases are, and how lessees or the Government would benefit from an operating fee based on other than anticipated capacity utilization as a proxy measure for production quantity. To the extent practical, please include detailed examples and explanations for any alternatives suggested.

Section 285.506 What rental payments will MMS collect on a project easement?

This section would provide an annual rental rate of $5 per acre for project easements, or a minimum of $450 per year, which would be due initially upon approval of the COP or GAP. Subsequent payments would be made on an annual basis, probably in conjunction with payments due under § 285.505, unless we specify otherwise in the lease for the associated commercial project. The width of the area covered by a project easement for a cable or pipeline would be 200 feet. The area covered by an installation, outside of the cable or pipeline corridor, would be limited to the areal extent of anchor chains, other devices, or facilities associated with the installation.

We grant ROW easements for electrical cables and pipelines under the existing oil and gas program, similar to project easements under the proposed alternative energy program. Rental rates for grants issued through the oil and gas program are specified by regulation and provide a precedent. The level of compensation due to the government for grants issued under the oil and gas program is an appropriate analog for uses under the proposed program. Accordingly, we propose to charge project easement holders a constant rental rate equal to $5 per acre, commencing with our approval of your COP or GAP and continuing until lease termination.

We request comment on whether this is the most appropriate way to set rentals for easements and whether the size of the rental is appropriate.

Section 285.507 What rental payments will MMS collect on ROW grants or RUE grants associated with alternative energy projects?

This section would provide the rental rates for ROW grant and RUE grants. Proposed rental rates for alternative energy ROWs parallel rentals considered fair and reasonable for oil and gas ROWs, and would be due in the amount of $70 per statute mile that a ROW crosses. For sites outside the main corridor, an additional rental of $5 per acre, or a minimum of $450 per year, would be charged. Likewise, proposed rental rates for an alternative energy RUE would parallel those for oil and gas RUEs and be charged at an annual rental rate of $5 per acre, or a minimum of $450 per year. The first rental payment would be due when the ROW or RUE request is filed. Subsequent payments could be made on an annual basis, for a 5 year period or for multiples of 5 years. We propose to apply the same interest charge to late rentals due on ROW grants or RUE grants for alternative energy projects as we do to late payments from oil and gas ROWs and RUEs under 30 CFR 218.54.

ROW authorizations approved under the oil and gas program are granted for electrical cables and pipelines, and similar requests would also be approved under the proposed alternative energy program. The value of compensation due to the government for ROW grants issued under the oil and gas program forms a useful precedent, which also appears to be an appropriate analog for alternative energy activities. As discussed in the last paragraph of the preceding section on project easements, the rental requirements for an alternative energy RUE are related to the payment requirements for oil and gas RUEs.

Proposed rental rates for oil and gas pipeline ROW grants were published on October 3, 2007, in the **Federal Register**, Vol. 72, No. 191, in 30 CFR 250.1130 of the rulemaking for 30 CFR parts 250, 253, 254, 256, RIN 1010-AD11, titled *Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Pipelines and Pipeline Rights-of-Way*. If we determine that the proposed oil and gas ROW rental payment regulations should be revised as a result of new information received through comments, we would also consider this information as it might apply to alternative energy ROW rental rates.

We request comment on whether this is the most appropriate way to set rentals for easements, and whether the size of the rental is appropriate.

Section 285.508 Who is responsible for submitting lease or grant payments to MMS?

For each lease, easement, ROW or RUE, one person, designated as payor, would be responsible for making all payments. All payors and the lessee shall maintain auditable records in accordance with regulations in Subpart

A. We may also issue guidance related to recordkeeping.

Section 285.509 May MMS reduce or waive lease or grant payments?

This section provides that the MMS Director has the authority to reduce or waive a rental or operating fee, including components of the operating fee such as the fee rate or capacity factor, when necessary to encourage continued or additional activities. Applications to modify lease payment terms must include information that demonstrates that continued or additional activity would not be economic without the reductions or waiver requested. No more than six years of your operations term will be subject to a full waiver of the operating fee.

It is our intent to use relevant electricity market and operating information to set the initial values for the power price and capacity factor of the operating fee formula, and to revise the same parameters after a lease is issued, in §§ 285.505(c)(2) and (3). Beyond that mechanism for revising payment requirements, the Director may consider a reduction or waiver of payments. In practice, we anticipate that most requests for reduced payments would involve a reduction in the fee rate of the operating fee formula. The Director may authorize such reductions if an applicant can show that market or operating conditions have changed significantly in a way that reduces project cash flows to uneconomic levels.

Section 285.510 Through 285.514 [Reserved]

Basic Financial Assurance Requirements for Commercial Leases

Section 285.515 What financial assurance must I provide when I obtain my commercial lease?

Before MMS will issue a commercial lease, the applicant must provide either a $100,000 basic lease-specific bond or another MMS approved financial assurance. You may also satisfy this requirement by providing proof that your designated lease operator provided the bond or approved financial assurance.

Section 285.516 What are the financial assurance requirements for each stage of my commercial lease?

Minimum financial assurance requirements for each stage of lease development are presented in this section. A $100,000 basic bond or other financial assurance is required at lease issuance. A second bond or financial instrument, in an amount determined by MMS, is due before the MMS will approve your Site Assessment Plan (SAP). And a third bond or financial instrument, in an amount determined by MMS, is due before the MMS will approve your Construction and Operations Plan (COP).

Section 285.517 How will MMS determine the amounts of the SAP and COP financial assurance requirements associated with commercial leases?

The MMS will determine the amount required by considering projected amounts of rentals and other payments due the government over the next 12 months; any past due rentals or other payments; and the costs of lease abandonment and cleanup. You may increase an existing bond or use a combination of existing bonds and other approved financial assurances to satisfy your requirements.

Section 285.518 [Reserved]

Section 285.519 [Reserved]

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

Section 285.520 What financial assurance amount must I provide when I obtain my limited lease, ROW grant or RUE grant?

Before MMS will issue a limited lease, ROW grant, or RUE grant, the applicant must provide either a $300,000 basic limited lease or grant-specific bond or another MMS approved financial assurance. The basic bond for a limited lease or grant is higher than the basic bond on a commercial lease because we anticipate that obligations on a limited lease or grant will begin to accrue sooner, but will not be as extensive as the obligations on a commercial lease. With the commercial lease, we have established periods to reassess the bond amount (i.e., before approving the SAP or the COP). We do not have these automatic reassessments under a limited lease or grant. Also, a limited lease has a short term, only 5 years and we do not anticipate reassessing the bond amount, unless the applicant proposes significant or complex facilities. You may also satisfy this requirement by providing proof that your designated limited lease or grant operator provided the bond or approved financial assurance.

Section 285.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?

The MMS may require you to provide additional financial assurance as activities on your lease progress and projected liabilities of rentals and other payments due the government over the next 12 months; any past due rentals or other payments; and the costs of lease abandonment and cleanup increase.

Section 285.522 through 285.524 [Reserved]

Requirements for Financial Assurance Instruments

Section 285.525 What general requirements must a financial assurance instrument meet?

All bonds and other forms of financial assurance must be payable to MMS upon demand and be in a form approved by MMS. Your surety bonds must be issued by a certified surety listed in the current Treasury Circular 570. This section also provides guidance on executing your bond and when your surety must notify you and the MMS due to changes in its Treasury certification status, insolvency, or bankruptcy.

Section 285.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?

You may utilize alternative financial assurance instruments when MMS determines that they protect the interests of the U.S. Government to the same extent as a bond. If using an alternative financial instrument, you must monitor its value and must provide the authority for MMS to sell it and use the proceeds if the MMS determines that you have failed to satisfy any lease obligation.

Section 285.527 Can I use a lease or grant-specific decommissioning account to meet the financial assurance requirements?

MMS may authorize you to establish a decommissioning account in a federally insured institution with certain limitations. Funds may not be withdrawn without prior MMS approval, and must be pledged to meet your decommissioning and site clearance obligations. This section also discusses how interest paid on the account must be treated and when we may allow the use of Treasury Securities to satisfy the obligation to make payments into the account.

Section 285.528 [Reserved]

Section 285.529 [Reserved]

Changes in Financial Assurance

Section 285.530 What must I do if my financial assurance lapses?

This section discusses the steps you must take if your surety loses Treasury certification, becomes insolvent, has its

charter suspended, or if your approved security expires. You must promptly notify MMS and provide new financial assurance.

Section 285.531 What happens if the value of my financial assurance is reduced?

This section requires that additional financial assurance be provided whenever the value of the current assurance falls below the required amount.

Section 285.532 What happens if my surety wants to terminate the period of liability of my bond?

This section describes the liabilities that accrue during a period of liability and provides requirements that a surety must follow when requesting to terminate the period of liability under its bond.

Section 285.533 How does my surety obtain cancellation of my bond?

The MMS will release a bond or allow a surety to cancel a bond only when all obligations covered by the bond have been completed satisfactorily or MMS accepts a replacement bond or alternative form of financial assurance. This section describes when your period of liability ends, when your financial assurance will be released by MMS, and how the MMS may approve a reduction in the amount of your approved financial assurance if portions of your lease obligations have been satisfactorily completed.

Section 285.534 When may MMS cancel my bond?

This section presents a comprehensive table which displays the different types of bonds required in this subpart, and when the period of liability ends. The table further displays when the bond will be released under a variety of circumstances.

Section 285.535 Why might MMS call for forfeiture of my bond?

The MMS may call for forfeiture of your bond if you default on any of the conditions under which you accepted your bond or refuse or fail to comply with any term or condition of your lease or grant.

Section 285.536 How will I be notified of a call for forfeiture?

This section specifies that you and your surety will be notified in writing of the call for forfeiture and provided the reasons for the MMS action. The MMS will also advise you and your surety in writing of the actions you must take within ten days to avoid forfeiture.

Section 285.537 How will MMS proceed once my bond or other security is forfeited?

This section explains that you and any co-lessee or co-grant holders are jointly and severally liable for the full cost of corrective actions on your lease or grant, regardless of the amount collected under your bond. MMS may take or direct action to recover all costs in excess of the forfeited bonds.

Section 285.538 [Reserved]

Section 285.539 [Reserved]

Revenue Sharing With States

Section 285.540 How will MMS equitably distribute revenues to States?

Proposed § 285.540 of this rule describes the factors MMS would consider in determining how to equitably distribute revenues among eligible States. This section also provides the procedure for calculating the State revenue shares.

The location of a State's submerged lands relative to the nearest part of a qualified project area (i.e., whether all or part of the project area falls within the State's 8(g) zone) or the proximity of the State's coastline to the geographic center of the qualified project would determine State eligibility, such that a State becomes eligible by meeting either criterion. However, only proximity of a State's coastline's to the geographic center of the qualified project would be a factor in allocating revenues among eligible States, should more than one State be eligible. If a qualified project changes significantly in size, scope, or some other way that may affect the equitable distribution of revenues, MMS may re-evaluate the project area to ensure that an equitable distribution of revenues is maintained when any such change becomes apparent.

To determine each eligible State's share of the 27 percent of the revenues received by the Federal Government for a qualified project, MMS is proposing to use the inverse distance formula, based on the proximity of the States' coastline to the geographic center of the qualified project. This is the formula used for the same purpose under the Coastal Impact Assistance Program administered by MMS. Under this methodology, eligible States with coastlines that are closer to a qualified project's center would receive proportionally more revenues than eligible States with coastlines that are farther away. In particular, if eligible State A is twice as far as eligible State B from the qualified project's center, then State A would receive half as much of the revenues as would State B. If Si is equal to the nearest distance from the geographic center of the qualified project to the i = 1, 2, * * * nth eligible State's coastline, then State i would be entitled to the fraction F_i of the 27-percent aggregate revenue share due all the States according to this formula: $F_i = [(1/S_i) \div (\Sigma_{i=1...n} (1/S_i))]$.

For example, if the nearest point of the coastline of State A is 21 miles from the qualified project's center, and the nearest point of the coastline of State B is 7 miles away (and there are no other eligible States), the ratio of A's distance to B's distance is 21:7, or 3:1. (Put another way, there are 28 total miles of distance from the nearest coastline points of eligible States to the qualified project's center; 21 of the 28 miles represent the distance from State A, and the remaining 7 miles represent the distance from State B.) In the calculations, this gets inverted (giving the formula its name) such that the ratio of A's share to B's share becomes 1:3 This results in the 27 percent being divided such that A gets one-fourth and B gets three-fourths of the 27-percent revenue share provided to the eligible States. These proportionate shares reflect the relative distances from the center of the qualified project to the nearest points of their coastlines in an inverse manner.

Section 285.541 How will a qualified project's location affect an eligible State's share of revenues?

Proposed § 285.541 includes a table that describes how a State's eligibility for revenue sharing would be determined, using 3 different situations. The examples are intended to provide interpretations of the rule for both typical cases and unusual situations. As such, the table provides 3 program principles from which proper application of the proposed rule can be inferred for other cases. These are those program principles:

- There must be at least one eligible State for every qualified project.
- A State becomes eligible for revenue sharing from a qualified project if either or both of two distance criteria are satisfied, i.e., at least a part of the project lies within the State's 8(g) zone or the geographic center of the project is within 15 miles of the nearest point of the State's coastline.
- The proportion of revenues to be shared by an eligible State depends only on the distance from the geographical center of the qualified project to the nearest point of the State's coastline.

To illustrate this further, here are expanded versions and discussions of the cases in the section and table.

Example (a). A qualified project area is located partially within the zone

extending 3 miles seaward of State A's submerged lands. The qualified project area does not extend into any other State's 8(g) zone, and the geographic center of the qualified project is more than 15 miles from the coastline of any other State. In this scenario, State A would receive the entire 27 percent share of the Federal revenues from the qualified project, regardless of the distance from the center of the qualified project to the nearest point on State A's coastline. This is the case because of the program principle that there must be at least one eligible State for every qualified project.

Example (b). A qualified project area is located partially within the zone extending 3 miles seaward of State A's submerged lands. The project area does not extend into any other State's 8(g) zone. The geographic center of the project is within 15 miles of State B's coastline, but is farther than 15 miles from State A's coastline. In this scenario, State A and State B would each receive a portion of the 27 percent of revenues to be shared from the project. This is the case because of the program principle that a State becomes eligible for sharing in the revenues from a qualified project by meeting either one of the two distance criteria, regardless how or when another State might become eligible. The sharing between the two States would be in accordance with their proximity to the geographic center of the qualified project. To elaborate, assume that the geographic center of the qualified project lies 20 miles from the closest point to State A's coastline and 10 miles from the closest point to State B's coastline. Pursuant to the inverse distance formula, States with coastlines that are farther from the geographic center of a project would get proportionally lower revenue shares from the project.

State A's proportion = [(1/20) ÷ (1/20 + 1/10)] = 1/3.

State B's proportion = [(1/10) ÷ (1/20 + 1/10)] = 2/3.

Therefore, State B, being twice as close as State A to the qualified project's center, would receive a share that is twice as large as State A's share.

The sharing rate of the total revenues is mandated to be 27 percent under the EPAct. Hence, if the qualified project generates $1,000,000 of revenues in a given year, the Federal Government would distribute the States' 27 percent share as follows, rounded to the nearest whole dollar:

State A's share = $270,000 × 1/3 = $90,000.

State B's share = $270,000 × 2/3 = $180,000.

Example (c). A qualified project area is located partially within the zone extending 3 miles seaward of State A's and State B's submerged lands. The project area does not extend into any other State's 8(g) zone. The geographic center of the qualified project is within 15 miles only of State B's and State C's coastlines. In this example, all 3 States would receive portions of the 27 percent of revenues to be shared from the qualified project based on the inverse distance formula. This is the case because of the program principle that the proportion to be shared by an eligible State depends only on the shortest distance from its coastline to the geographical center of the project, not the number or type of criteria that were the basis for its eligibility.

To illustrate how the inverse distance formula would be applied in the case of 3 eligible States, assume that the qualified project center lies 20 miles from the closest coastline point in State A, 10 miles from the closest coastline point in State B, and 14 miles from the closest coastline point in State C. The proportion of the 27 percent revenue share due each State would be calculated as follows:

State A's proportion = [(1/20) ÷ (1/20 + 1/10 + 1/14)] = 7/31.

State B's proportion = [(1/10) ÷ (1/20 + 1/10 + 1/14)] = 14/31.

State C's proportion = [(1/14) ÷ (1/20 + 1/10 + 1/14)] = 10/31.

If the qualified project generates $1,000,000 of revenues in a given year, the Federal Government would distribute the States' 27 percent share as follows:

State A's share = $270,000 × 7/31 = $60,968.

State B's share = $270,000 × 14/31 = $121,935.

State C's share = $270,000 × 10/31 = $87,097.

Subpart F—Plans and Information Requirements

Overview

Subpart F describes the types of plans and information requirements for commercial leases, limited leases, ROW grants, and RUE grants for alternative energy activities. The subpart outlines the timing of submission, content requirements, and necessary MMS approvals for each of the plans. The MMS will not allow a lease or grant holder to conduct any activities on the OCS without proper plan submittal and MMS approval. The types of required plans are described below. The lessee, grant holder, or operator must submit the appropriate plan to MMS for review and approval, before beginning any activities covered by that plan.

Types of Plans. The MMS is proposing three types of plans that would be required, depending on the type of instrument held and the activity to be conducted:

(1) Site Assessment Plan (SAP),

(2) Construction and Operations Plan (COP), and

(3) General Activities Plan (GAP).

The SAP and the COP would be used for commercial leases, while the GAP would be used for limited leases and grants.

Prior to conducting site assessment activities on a commercial lease, a lessee would be required to submit a SAP. The SAP describes the surveys that a lessee plans to conduct to characterize a commercial lease, including a project easement. These surveys would include: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys), (2) resources assessment surveys (e.g., meteorological and oceanographic data collection), and (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys).

A COP would be required before a lessee could begin construction and/or operations on a commercial lease, including a project easement. The COP describes the construction, operations, and conceptual decommissioning activities the lessee plans to undertake.

A GAP would be required before a lessee or grantee could begin activities on a limited lease (including a project easement, as applicable) or ROW grant or RUE grant. The GAP describes the site assessment and/or development activities. These activities include: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys, (2) resources assessment surveys (e.g., meteorological and oceanographic data collection), (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys), and (4) construction activities, operations, and conceptual decommissioning plans for all planned facilities.

Considered Approaches

In developing an approach for the types of plans to require for alternative energy projects, MMS considered a number of options. One option we considered was a single comprehensive project plan. This plan would cover the entire project, including site assessment, construction, operations, production, and decommissioning. However, we were concerned that the one plan approach would make compliance with NEPA, CZMA, and other Federal laws

more difficult, since the single plan would need to be modified at each stage of the project and would possibly require additional compliance reviews. Another option was multiple plans, with a different plan for each stage in the project. For example, the applicant would submit one plan for site assessment, one for construction, another for production, and a final plan for decommissioning. This option was not selected because it was considered overly burdensome and would require the preparation of multiple NEPA documents, reviews and other compliance documents.

The selected approach would require two plans for a commercial lease (SAP and COP) and one plan (GAP) for limited leases and ROW grant or RUE grants. We chose this approach for commercial lease because there are two distinct phases for commercial development for alternative energy projects: A site assessment phase, where a lessee may install a meteorological or marine data collection facility to assess alternative energy resources, and a generation of power phase, which includes construction, operations, and decommissioning. Limited leases are limited to resource measurements or technology testing and are not for the commercial generation of power. Therefore, only one phase exists, and only one plan, a GAP, is required for this phase. Having only one plan for one phase allows for a simple process to conduct resource evaluation or technology testing. The same reasoning was used for ROW grant and RUE grants—these instruments do not involve commercial power generation activities on the OCS. We wanted to distinguish between generating and non-generating types of projects.

Overview of Required Plans

The two plans for commercial development are a site assessment plan (SAP) and a construction and operations plan (COP). These plans should clearly describe the general approach to the project and include detailed technical and environmental information. The two plan approach for commercial activities sets two defined times for conducting NEPA analysis and CZMA determinations. These plans must include all the information needed to conduct appropriate NEPA analysis and for compliance with other relevant laws. In addition, the applicant must submit one copy of their CZMA consistency certification with each plan. This approach includes a predictable schedule for development and milestones for plan submittals.

The SAP covers site assessment and other data gathering activities that would be conducted to gather information needed to develop the project. The data gathered under the SAP would be used to develop the COP for the project. The site assessment activities may include physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys), resources assessment surveys (e.g., meteorological and oceanographic data collection), and baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys). Additionally, a SAP may include the construction of simple facilities for data collection, such as meteorological towers. If MMS approves the SAP, the operator may begin conducting any approved activities except those that involve the construction of facilities proposed in the SAP. The operator would gather the data needed to confirm the location of any facilities proposed in the SAP or for the COP. The operator would submit the findings and data to MMS before constructing any facilities. Most of the data and findings of SAP activities would be submitted as part of the COP. The SAP expires when MMS approves the COP. To conduct site assessment type activities after a COP is approved, the applicant would need to include those activities in the COP.

To facilitate development of a commercial lease, an applicant may choose to submit to MMS a COP with the SAP. In this case the NEPA, CZMA, and compliance with other relevant laws would be done at one time. If the applicant decides to submit the COP and SAP simultaneously, then sufficient data and information must be submitted with the COP for MMS to conduct needed technical, NEPA, and other required reviews. If new information becomes available after the applicant completes the site assessment activities, then the COP will require revision. Furthermore, MMS may need to conduct additional reviews, including NEPA, on any new information.

The COP would describe the construction and operations for the project itself, covering all planned facilities, including onshore and support facilities, and all anticipated project easements needed for the project. It would also describe the actual activities related to the project including construction, commercial operations, maintenance, and decommissioning. The COP would include the results of the survey activities conducted under the SAP. The COP must demonstrate to MMS that the operator has planned and is prepared to conduct the proposed activities in a manner that conforms to their responsibilities under these regulations. It also must demonstrate that the project:

- Will conform to all applicable laws, implementing regulations, lease provisions and stipulations or conditions of the commercial lease;
- Is safe;
- Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment;
- Does not cause undue harm or damage to sites, structures, or objects of historical or archaeological significance;
- Will use best available and safest technology; will use best management practices; and will employ properly trained personnel.

Limited leases, ROW grants, and RUE grants would require approval of a general activities plan (GAP). The GAP includes components of both the SAP and the COP. However, we expect that limited leases, ROWs, and RUEs would involve less extensive activities than those planned for a commercial lease. The applicant could include multiple scenarios in the GAP to address the potential outcome of the site assessment activities, so that multiple locations would be evaluated as part of the NEPA analysis. If, after evaluating the site, the initially planned location of a facility needs to be relocated, additional NEPA would not be required, since alternative locations were evaluated in the NEPA for the GAP.

Site Assessment Plan (SAP): The SAP describes the operator's initial assessment and survey activities needed to characterize the alternative energy project site for a commercial lease, including a project easement. These activities would take place during the site assessment term of a commercial lease. The data obtained during site assessment is used to develop a COP and is included in the COP. The activities proposed in a SAP may include vessel-based surveys and the installation of facilities (including vessels) attached to the sea floor, such as meteorological towers to measure winds, radars to assess avian resources, or marine data collection facilities to measure waves or currents. The MMS expects that the applicant would conduct physical characterization surveys, resource assessment surveys, and baseline environmental surveys under the SAP. Information contained in the SAP must provide sufficient

detail for MMS to adequately assess the proposed activities and ensure compliance with NEPA and other relevant Federal laws.

The MMS must approve the SAP before the operator can begin conducting any proposed activities. If MMS approves the SAP, the operator may begin conducting activities that do not involve the installation of facilities. The operator would gather data to confirm the placement of the facilities. Before constructing any facilities, the operator would submit to MMS the findings of the data gathering and appropriate data, along with additional information on the facilities. After MMS receives the additional data and information and after we notify you that we have no objections, the applicant may begin construction activities proposed in the SAP. If MMS has objections, the applicant may not begin construction until all MMS objections are resolved to MMS's satisfaction.

When MMS receives the applicant's COP for technical and environmental review, MMS may extend the lease term during the review period, if necessary. The SAP expires when MMS approves the COP. Therefore, if an applicant anticipates conducting site assessment activities anytime during the COP period, those activities must be described in the COP and receive MMS approval of the COP before conducting the activities.

Subpart F outlines what the applicant must demonstrate in the SAP such as legal requirements, safety, other uses of the OCS, environmental protection, technology, best management practices, and the use of properly trained personnel. The provisions also outline the information that the applicant must submit with the SAP as well as additional information that must be submitted if the SAP includes activities that require the installation of bottom-founded facilities. The MMS envisions that most of the facilities would be relatively simple and temporary. If an operator proposes to install a facility that the MMS determines is significant, or complex, additional information would be required. If MMS makes this determination, you would be required to complete the survey activities in the SAP and submit an initial survey report of the results of those activities to the MMS. You must also submit a Facility Design Report and a Facility Fabrication and Installation Report, as described in subpart G, and a Safety Management System, as described in subpart H, before any construction could begin. The Facility Design Report provides MMS with a detailed description of the proposed facility or facilities and locations on the OCS. The Fabrication and Installation Report describes the lessee/operator's or grant holder's plans for both the facility's fabrication and installation process. MMS will review these reports prior to each stage of these operations.

For commercial leases acquired noncompetitively, you must submit the SAP within 60 calendar days after the MMS determination of no competitive interest. The MMS will not issue the lease until the SAP is approved. If you acquired a commercial lease competitively, you must submit the SAP within 6 months of the date of lease issuance. We will conduct technical and environmental reviews, including NEPA analysis, and forward the plan and required information to affected States for CZMA review. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the SAP. MMS will specify the terms and conditions of the approval and you must incorporate these into your SAP. If the SAP is approved or approved with modifications, the applicant must conduct all site assessment activities in accordance with the provisions of the approved plan and MMS would require the applicant to certify compliance with certain of the terms and conditions as identified by the MMS. If MMS does not approve the SAP, we will provide an explanation of our disapproval, and the applicant may modify and resubmit the revised SAP.

If you want to conduct activities not directly addressed in the approved SAP, you would need to provide MMS with a written description of the proposed activities and receive approval from MMS before conducting the activities. We will determine whether the activities are within the scope of the approved SAP or if the SAP needs to be revised. If MMS determines that you must revise the SAP, then MMS must approve the revised SAP before you can conduct the activities.

Construction and Operations Plan (COP): The COP describes the construction, operations, and conceptual decommissioning plans for the operations term of any project under a commercial lease, including your project easement. Your plan would describe all operations and facilities (onshore and offshore) that would be installed and used to test, gather, transport, transmit, or generate and distribute energy from the lease. The COP would include:

- Nominations of certified verification agents (CVA) for MMS approval;
- Preliminary plans for project design, facility fabrication and installation, and production transportation and transmission;
- Plans for safety management, inspection, maintenance, and monitoring systems; and
- The decommissioning concept.

The proposed rule outlines the process for preparing, submitting, processing, and implementing a COP. The COP should include any anticipated site assessment activities that may be conducted during the life of your plan. The MMS must approve the COP before you can construct any facilities for commercial operation.

As with the SAP, the proposed provisions outline what a COP must contain and demonstrate, as well as how the COP is submitted, processed, and authorized. The MMS may require additional specific information for submittal with the COP, to aid in the appropriate reviews of the project by external agencies and to assist in compliance with all relevant Federal laws and regulations (e.g., NEPA, CZMA, ESA, and MMPA). We may request additional information if the information provided is insufficient.

For commercial leases acquired noncompetitively and competitively, you must submit a COP within 5 years after MMS approves your SAP. MMS will extend the term of the SAP, if necessary, while conducting the technical and environmental reviews of your COP. We will conduct these technical and environmental reviews of your COP, including NEPA analysis, and forward the plan and required information to affected States for CZMA review. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the COP. MMS will specify the terms and conditions of the approval and these terms and conditions would be incorporated into your COP. If MMS approves the COP or approves the COP with modifications, the applicant must conduct all of the proposed activities in accordance with the provisions of the approved plan and MMS would require the applicant to certify compliance with certain of the terms and conditions as identified by the MMS. If MMS does not approve the COP, we will provide an explanation of our disapproval, and the applicant may modify and resubmit the revised COP.

If MMS approves your project easement, we will issue an addendum to your lease specifying the terms of the easement. The project easement may include off-lease areas that contain areas for cable, pipeline or associated facilities. These areas cannot exceed 200

feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a greater width. For associated facilities, the area is limited to the area reasonably necessary for power stations for electricity or pumping stations for other energy products such as hydrogen.

You may propose in your COP to develop your lease in phases. You must clearly provide details as to the portions of the lease that will be initially developed for commercial operations, and what portions of the lease will be reserved for subsequent phased development.

If MMS approves your COP, you must commence construction by the date given in your construction schedule, as stated in the approved COP. MMS may approve a deviation from this schedule. However, before you may construct and install facilities under the approved COP, you must submit to MMS a Facility Design Report and a Fabrication and Installation Report. You may commence commercial operations 30 calendar days after the CVA has submitted the final fabrication and installation report to MMS. The activities described in these 2 reports must fall within the scope of the approved COP, or you will be required to submit a revision to the COP for approval before commencing the activity.

A COP may require future revisions and potentially require additional or new environmental and regulatory reviews. You must notify MMS in writing before you conduct any activities not described in your approved COP, describing in detail the activities you propose to conduct. MMS will determine whether the proposed activities may be conducted under your existing COP or require a revision to the COP. We may request that you provide additional information for us to make this determination. The MMS will periodically review an approved COP and may determine, based on the significance of any changes in information and environmental conditions affecting activities, that revisions are necessary. The revisions may require new environmental and technical reviews.

Any time you cease commercial operations, without an MMS approved suspension, you must notify MMS. MMS may cancel your lease and you must start the decommissioning process if you cease commercial operations for an indefinite period which extends longer than 6 months.

When you complete the commercial operations under your approved COP, you must start the decommissioning process described in subpart I of this part.

General Activities Plan (GAP): The GAP describes the operator's planned activities for a limited lease, ROW grant, or RUE grant. It would include information similar to what is required in a SAP, as well as additional information concerning planned activities throughout the term of the lease or grant. As with the SAP, the GAP must be submitted within 6 months of competitive issuance of a lease or grant or within 60 calendar days after the determination of no competitive interest for a lease or grant being pursued noncompetitively. In some cases, a GAP would describe activities that are analogous to those covered in a COP for a commercial lease, i.e. if you are proposing a facility or multiple facilities. Review, approval, and revision of a GAP will be subject to requirements and procedures similar to those applied to SAPs and COPs.

NEPA Compliance for Plans: MMS action on the SAP, COP, and GAP would require the preparation of appropriate NEPA documentation. We anticipate that initially, all commercial development projects will require an EIS for each phase of the project (i.e. one EIS for the SAP and one EIS for the COP). Also, we anticipate that limited leases and RUE and ROW grants will require an EIS. After the impacts and related mitigation of alternative energy activities on the OCS are better understood, it is possible that projects may require an environmental assessment. The applicant must provide MMS with the data necessary to complete the required NEPA documentation. This would include a description of those resources, conditions, and activities that could be affected by your proposed site assessment activities, including associated construction and decommissioning activities. This would include, but is not limited to information on the following:

- Hazard information including meteorology, oceanography, or manmade hazards.
- Water quality including turbidity and total suspended solids from construction.
- Biological resources including benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, barrier islands, beaches, dunes, wetlands, seagrasses and plant life.
- Threatened or endangered species including critical habitats, as defined by the Endangered Species Act of 1973.
- Sensitive biological resources or habitats including essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitats, chemosynthetic communities, and calving grounds.
- Archaeological resources including historic and prehistoric archaeological resources to meet the requirements of the National Historic Preservation Act of 1966, as amended, and associated regulations.
- Social and economic including employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed.
- Coastal and marine uses including military activities, vessel traffic, and mineral exploration or development.
- Other resources, conditions, and activities as identified by the Director.

The MMS may decide to use a third party to prepare the NEPA document.

CZMA Compliance for Plans: For purposes of Federal consistency, MMS will treat SAPs, COPs, and GAPs as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The plans must describe all federally licensed or permitted activities and operations proposed on the MMS-issued lease, ROW grant, or RUE grant. The lease or grant holder will be required to prepare a consistency certification to submit to MMS with the proposed plan. The MMS will send one copy of the plan, supporting information, and consistency certification to the affected State CZMA agency. The State agency will then determine whether the supplied information is adequate for its review. When the State agency has adequate information it will begin its consistency review and either concur with or object to the consistency certification.

Subsequent consistency reviews for revisions to the plan are not required unless MMS determines that the revisions: (1) Result in a significant change in the impacts previously identified and evaluated; (2) require any additional Federal authorizations; or (3) involve activities not previously identified and evaluated. For CZMA compliance purposes, when a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively

presumed; or (2) the State objects to the applicant's consistency certification and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

NEPA and CZMA Compliance for Additional Reports and Approvals: The NEPA and CZMA compliance for a project will be addressed in the MMS decision process for the SAP, COP, or GAP. The reports and applications that are required relating to facility design, fabrication, installation, and decommissioning are intended to provide MMS with specific technical details on the project as approved in the SAP, COP, or GAP. If these documents present activities that fall outside the scope of your approved SAP, COP, or GAP, then you will be required to submit a revision to your SAP, COP, or GAP.

Additional NEPA or CZMA review may be required if the revisions for facility design, fabrication, installations, or decommissioning:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional authorizations; or

(3) Propose activities not previously identified and evaluated.

Frequency of NEPA/CZMA Reviews Based on Instrument Held: The number of NEPA and CZMA reviews that would be conducted on your lease or grant is determined by the type of instrument that you hold (Table 2). For a competitive, commercial lease there would be three NEPA and three CZMA reviews—one each for the Lease Sale action, the SAP, and the COP. For a non-competitive commercial lease, two NEPA and two CZMA reviews would be required—one for the lease with the SAP and one for the COP. Since MMS requires the applicant to submit a SAP or a GAP within 60 calendar days after the Director issues a determination that there was no competitive interest for your lease or grant, the SAP would be reviewed under the same review as the lease issuance action. An efficiency is gained in this example because MMS can conduct reviews on the SAP and lease issuance at the same time. It would be unreasonable to require this for competitive commercial leases since MMS would have to request all bidders to submit a SAP before they actually knew whether they would be awarded a lease.

For limited leases, two NEPA and two CZMA reviews would be required for a competitive limited lease and one review for a non-competitive lease. The reviews for the competitive limited lease would be conducted on the lease sale action and the GAP, while the non-competitive limited lease would have a simultaneous review of the lease issuance action and the GAP.

We envision that all ROW grants and RUE grants would likely be non-competitive. The ROW/RUE issuance action and the GAP would be reviewed under NEPA and CZMA simultaneously. In the unlikely case of a competitive ROW/RUE grant, a separate NEPA and CZMA review would be conducted on the ROW/RUE sale and the GAP.

TABLE 2.—FREQUENCY OF NEPA/CZMA REVIEWS BASED ON INSTRUMENT HELD

Instrument held	MMS process	NEPA documentation and CZMA review
Competitive Commercial Lease	Conduct lease sale and issue decision on plans.	1. Lease Sale EIS. 2. SAP. 3. COP.
Non-Competitive Commercial Lease	Negotiate and issue lease	1. Lease Issuance and SAP. 2. COP.
Competitive Limited Lease	Conduct lease sale and issue decision on plan.	1. Lease Sale. 2. GAP.
Non-competitive Limited Lease	Negotiate and issue lease	1. Lease Issuance and GAP.
Competitive ROW, RUE Grant	Conduct ROW, RUE sale and issue decision on plan.	1. ROW, RUE Sale. 2. GAP.
Non-competitive ROW, RUE Grant	Negotiate and issue ROW, RUE grant	1. ROW, RUE issuance and GAP.

Section by Section Discussion for Subpart F

Section 285.600 What plans and information must I submit to MMS before I conduct activities on my lease or grant?

This section describes the three different types of plans that are required to be submitted to MMS for approval. The type of plan that you would submit depends on the type of instrument held and the type of activity to be conducted: (1) Site Assessment Plan (SAP), (2) Construction and Operations Plan (COP), and (3) General Activities Plan (GAP). The SAP and the COP would be used for commercial leases, while the GAP would be used for limited leases and grants. Prior to conducting site assessment activities on a commercial lease, a lessee would be required to submit a SAP to MMS for review and approval. A COP is required to be submitted to MMS for review and approval before a lessee could begin construction and/or operations on a commercial lease, including a project easement. A GAP is required to be submitted to MMS for review and approval before a lessee could begin activities on a limited lease or ROW grant or RUE grant including, if applicable, a project easement.

Section 285.601 When am I required to submit my plans to MMS?

The timing for the submission of your plans depends on whether your lease or grant was issued on a competitive or noncompetitive basis (refer to subpart B for leases or subpart C for grants for further discussion of these types of conveyance). The timing is as follows:

- *Competitively issued lease or grant:* You must submit your SAP or GAP within 6 months of issuance.
- *Non-competitive lease or grant:* You must submit your SAP or your GAP within 60 calendar days after the Director issues a determination that there was no competitive interest for your lease or grant.
- *Operations for commercial lease:* You must submit a COP at least 6 months before the end of your site assessment term if you plan to request an operations term for your commercial lease.

MMS will allow you to submit your COP with your SAP. However, you must submit the necessary data and information with your COP to allow MMS to complete its technical and environmental reviews. Furthermore, you may need to make revisions to your

COP, followed by additional MMS reviews, including those required under NEPA, if new information becomes available after you complete your site assessment activities. For example, following a geophysical survey, you may determine the presence of hard bottom habitat that was previously not identified. Based on this information, MMS may require you to conduct a biological survey to describe the communities present in that habitat. The results from those surveys may require you to revise your COP in order to propose the relocation of some of part or all of your proposed facilities to another part of your lease.

Section 285.602 What records must I maintain?

You must maintain and provide to MMS upon request all data and information related to compliance with required terms and conditions of your SAP, COP, or GAP. You must meet this requirement until MMS releases your financial assurance.

Section 285.603 [Reserved]

Section 285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

Section 285.605 What is a Site Assessment Plan (SAP)?

This section generally describes a SAP. A SAP contains the plans for conducting surveys, data gathering, and operations to characterize a commercial lease, including the project easement. A SAP must include a description of how surveys such as physical characterization surveys, resource assessment surveys, and baseline surveys would be conducted. It includes additional requirements for both simple and complex facilities.

Section 285.606 What must I demonstrate in my SAP?

This section provides details on the requirements for a SAP. The SAP must demonstrate how a lessee would conform to all applicable laws, implementing regulations, lease provisions and stipulations. The activities conducted under a SAP must:

- Conform to all applicable laws, implementing regulations, lease provisions and stipulations;
- Be safe;
- Not unreasonably interfere with other uses of the OCS, including those involved with national security or defense
- Not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;
- Use best available and safest technology;
- Use best management practices; and
- Use properly trained personnel.

The SAP must demonstrate that the planned site assessment activities include all surveys and other activities to gather information and data required for the COP.

Section 285.607 How do I submit my SAP?

This section requires you to submit a hard copy and an electronic version of the SAP to MMS at the address in § 285.110.

Section 285.608 [Reserved]

Section 285.609 [Reserved]

Contents of the Site Assessment Plan

Section 285.610 What must I include in my SAP?

This section contains further detailed requirements on what must be submitted for SAP applications. This includes: identifying information, a discussion of the objectives, air emissions, lease stipulations, a listing of all Federal, State, and local authorizations or approvals for projected site assessment activities, a list of entities that you have consulted with regarding the potential impacts of your project, financial assurance information, and additional information as requested by MMS. For site assessment activities that include the installation of any facilities (*e.g.*, a single monopole meteorological tower), additional requirements are listed. They include:

- A location plat,
- Geotechnical survey,
- General structural and project installation information,
- A description of the deployment activities,
- Construction schedule,
- A list of solid and liquid wastes generated,
- Shallow hazards,
- Archaeological resource surveys,
- Relevant geological surveys,
- Biological surveys,
- Socio-economic surveys,
- A description of any vessels and aircraft,
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts,
- CVA nominations (if required),
- Decommissioning and site clearance procedures,
- References, and
- Additional information as requested by MMS.

Section 285.611 What information and certifications must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws?

This section requires the applicant to submit information needed to assist MMS in preparing compliance documents related to NEPA (Environmental Impact Statement or Environmental Assessment) and other relevant laws, including MSA, ESA, and CZMA, that are required for SAP approval. This includes information on resources, conditions, and activities listed in this section that could be affected by or could affect activities proposed and approved in your SAP.

This section also requires the applicant to submit a consistency certification for CZMA. The consistency certification must state that the proposed activities covered in the SAP comply with the State(s) approved coastal management program and that the applicant will conduct these activities in a manner consistent with such a program. The consistency certification must also include ''information'' as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2) and ''analysis'' as required by 15 CFR 930.58(a)(3).

Section 285.612 How will MMS process my SAP?

This section describes the MMS review process for a SAP. The MMS will review the SAP and determine if it contains all of the required information needed to complete the technical and environmental reviews. After MMS has all of the information needed for its reviews, we will prepare appropriate NEPA documentation.

The MMS will forward a copy of your SAP and consistency certification to the State's CZM Agency after all information requirements for the SAP are met. We will consult with relevant Federal, State, and local agencies and provide to other Federal, State, and local agencies relevant non-proprietary data and information pertaining to the proposed site assessment activities as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (*e.g.* ESA and MSA). We may request additional information during the review and approval process; if you do not provide this information MMS may disapprove your application.

After MMS completes the technical and environmental reviews, we may approve, disapprove, or approve with modifications your SAP. If we disapprove your SAP, we will provide the reasons for the disapproval and you

will have an opportunity to revise and resubmit your SAP. If we approve your SAP, it will be subject to terms and conditions set by MMS. We will specify these terms and conditions and they will be incorporated into your SAP. Examples of the types of terms and conditions we may require include, but are not limited to terms and conditions from and ESA incidental take statement, conservation recommendations resulting from EFH consultations, and other safety, operational, or environmental protection measures. Also you must certify compliance with certain of these terms and conditions as identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures.

Activities Under an Approved SAP

Section 285.613 When may I begin conducting activities under my approved SAP?

After MMS approves the SAP, the applicant may begin to conduct any approved activities that do not involve the construction of facilities or any other seabed disturbing activities on the OCS.

Section 285.614 When may I construct OCS facilities proposed under my SAP?

This section discusses the timing of constructing simple and complex facilities and various reports that must be submitted at each stage for MMS approval before proceeding to the next step. Also required are CVA nominations for plans and the Safety Management System.

Before you begin construction of any OCS facility described in the SAP, you must complete the initial survey activities that relate to the construction and installation of the facility or facilities, and a report of the findings of those activities must be submitted to MMS. This report must also identify the specific location on the lease area where facilities will be installed. If MMS determines that the facilities are complex or significant, additional information, described in the last paragraph of this section, is required. The applicant may begin to construct and install a facility or facilities after MMS receives the initial survey report and has no objections. If MMS does not respond to the applicant with objections within 60 calendar days after receiving the report, MMS is deemed not to have objections to the report.

However, if MMS has objections to the initial survey report, we will notify the applicant in writing within 60 calendar days of receipt. The MMS may follow-up with written correspondence outlining its specific objections to the initial survey report and request that certain actions be performed to resolve the agency's objections. The applicant cannot begin construction until the objections are resolved.

If you are constructing multiple facilities or a complex or significant facility you must complete the required survey activities, and submit an initial survey report of the findings of those activities to MMS. The applicant must also submit a Facility Design Report; a Facility Fabrication and Installation Report; CVA nomination; and a Safety Management System.

Section 285.615 What other reports or notices must I submit to MMS under my approved SAP?

This section identifies the various reports and notifications that must be submitted to MMS and their timing. This includes the initial survey report, an annual summary of findings from site assessment activities, notification of completion of construction and installation activities, and annual compliance certification. The compliance certification includes a listing and description of any mitigation measures and monitoring and their effectiveness. The MMS will protect the annual summary information from public disclosure as provided in § 285.113.

Section 285.616 [Reserved]

Section 285.617 What activities require a revision to my SAP and when will MMS approve the revision?

The lessee or operator must notify MMS in writing, including a detailed description, prior to conducting any activities not described in the SAP, and we will determine if those activities require a revision to the approved SAP. We will also conduct periodic reviews of the activities being conducted under an approved SAP, to ensure that they fall within the scope of the SAP. The SAP will likely be required to be revised if the applicant plans to:

- Conduct activities not described in the approved SAP,
- Change the size or type of facility or equipment used,
- Change the surface location of a facility or structure,
- Add another facility or structure not contemplated in the approved SAP,
- Change the location of the onshore support base from one State to another or to a new base requiring expansion, or
- Change the location of bottom disturbances by 500 feet (152 meters), or changes to any other activity specified by MMS.

A revision to the SAP may require NEPA, CZMA, and other required compliance if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the SAP if the revision is designed to prevent or minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

Section 285.618 What must I do upon completion of approved site assessment activities?

After completing activities under the approved SAP, the applicant must initiate the decommissioning process for any facilities built for conducting SAP activities. However, if you submit a COP to MMS, the applicant may leave the facilities in place while MMS reviews the COP. You are not required to start decommissioning if the facilities are authorized to remain in place under your approved COP. However, if MMS determines that the facilities built for conducting SAP activities may not remain in place, then the decommissioning process described in subpart I of this part must be initiated. Upon the termination of your lease, you must initiate this same decommissioning process for all facilities authorized by your approved COP.

Section 285.619 [Reserved]

Construction and Operations Plan for Commercial Leases

Section 285.620 What is a Construction and Operations Plan (COP)?

This section provides the basic requirements for the COP. The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. The COP must include the location of the operations and facilities, the land, labor, material, and energy requirements associated with such operations and facilities, and environmental and safety safeguards. The COP must cover all proposed activities and operations, including activities associated with constructing and maintaining project easements. The

MMS must approve the COP before any construction and operation can begin.

Section 285.621 What must I demonstrate in my COP?

This section describes what the applicant must demonstrate in the COP. The COP must demonstrate how proposed activities conform with all applicable laws, implementing regulations, lease provisions and stipulations or conditions of the commercial lease. In addition, the COP must demonstrate that the proposed activity is:

- Safe;
- Does not unreasonably interfere with other uses of the OCS;
- Does not cause undue harm or damage;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

Section 285.622 How do I submit my COP?

This section provides the requirements for submitting the COP and future revisions, the applicant must submit one hard copy and one electronic version of the COP to MMS. The applicant may submit information to cover the project easement with the original submission of the COP or at a later time, as a revision to the COP.

Section 285.623 [Reserved]

Section 285.624 [Reserved]

Contents of the Construction and Operations Plan

Section 285.625 What survey activities must I conduct to obtain approval for the proposed site of facilities?

Before MMS will approve the site of the commercial facilities proposed for the project, you must conduct the listed surveys and activities under the SAP and submit the results to MMS in your COP. The required surveys and activities include:

- Shallow hazard surveys;
- Geological surveys;
- Geotechnical surveys;
- Archaeological resource surveys;
- Biological surveys;
- Socio-economic surveys; and
- An overall site investigation.

You would conduct these surveys and activities under the SAP. You must describe in your COP any other surveys that you may need to conduct during your COP phase.

Section 285.626 What must I include in my COP?

This section lists the project-specific information that must be included in the COP. The required information includes:

- Identifying information;
- The construction and operation concept;
- Designation of an operator;
- Lease stipulation and compliance information;
- A location plat;
- General structural and project design, fabrication, and installation information; including how you will use a CVA to review and verify each stage of the project
- All cables and pipelines, including lines on project easements;
- A description of the deployment activities;
- A list of solid and liquid wastes generated;
- A listing of chemical products used;
- A description of any vessels, vehicles, and aircraft that will be use to support the activities;
- A general description of the operating procedures and systems;
- Decommissioning and site clearance procedures;
- A listing of all Federal, State, and local authorizations, approvals or permits that are required;
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts;
- A summary of information incorporated by reference;
- A list of entities with whom you consulted, or will be consulting, regarding potential impacts associated with the proposed activities;
- Reference information;
- Financial assurance statements;
- CVA nominations;
- Construction schedule; and
- Any other information required by MMS.

Section 285.627 What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws?

This section discusses additional submittal requirements to assist MMS in complying with NEPA and other relevant laws, including MSA, ESA, and CZMA. The information must include the resources, conditions, and activities listed in this subpart, that could be affected by proposed activities, or that could affect proposed construction, operation, and decommissioning activities. The applicant must include one copy of the consistency certification for the project to verify compliance with each State's approved coastal management program, including required ''information'' and ''analysis'' per § 285.611. Also, the applicant must submit an oil spill response plan and the Safety Management System for the project.

Section 285.628 How will MMS process my COP?

This section discusses how MMS will review the submitted COP and determine if it contains the information necessary to conduct the technical and environmental reviews. The MMS will notify the applicant if the COP lacks any information needed for the reviews. We will prepare appropriate NEPA documentation and forward one copy of the COP, consistency certification, and associated data and information under the CZMA to the State's CZM Agency. When appropriate, we will coordinate and consult with, and provide relevant, non-proprietary data and information to, relevant State, Federal and local agencies as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (*e.g.* ESA and MSA). We may request additional information during the review and approval process; if you do not provide this information MMS may disapprove your application.

After MMS completes the technical and environmental reviews, we may approve, disapprove, or approve with modifications your COP. If we disapprove your COP, we will provide the reasons for the disapproval and you will have an opportunity to revise and resubmit your COP. If we approve your COP, it will be subject to terms and conditions set forth by MMS. The applicant must certify compliance with certain of those terms and conditions as required under § 285.615(c). If MMS disapproves your COP, we will inform you of the reasons and you will have an opportunity to resubmit a revised plan addressing the concerns identified. The MMS may suspend the term of your lease, as appropriate, to allow this to occur. If the project easement is approved, MMS will issue an addendum to the lease specifying the terms of the project easement.

Section 285.629 May I develop my lease in phases?

In the COP, the applicant may request to develop the commercial lease in phases. To support this request, the applicant must provide details as to what portions of the lease will be initially developed for commercial operations, and what portions of the lease will be reserved for subsequent phased development.

Section 285.630 [Reserved]

Activities Under an Approved COP

Section 285.631 When must I initiate activities under an approved COP?

After MMS approves the COP the applicant must commence construction by the date given in the construction schedule, and included as a part of your approved COP, unless MMS approves a deviation from the schedule.

Section 285.632 What documents must I submit before I may construct and install facilities under my approved COP?

This section describes documents that must be submitted to MMS for review, before construction and installation of facilities under an approved COP. This includes a Facility Design Report and a Fabrication and Installation Report for facilities proposed for commercial operations. The requirements for these reports are found in § 285.701 and 702. The activities described in these reports must fall within the scope of the approved COP. If they are not within the scope of the approved COP, the applicant will be required to submit a revision to the COP for MMS approval, before commencing the activity.

Section 285.633 How do I comply with my COP?

After completing the environmental and technical reviews of the COP, if MMS approves your COP, we will specify terms and conditions to be incorporated into your COP. These terms and conditions will be considered as part of the COP and you must comply with them. We will specify these terms and conditions and they will be incorporated into your COP. Examples of the types of terms and conditions we may require include, but are not limited to terms and conditions from and ESA incidental take statement, conservation recommendations resulting from EFH consultations, and other safety, operational, or environmental protection measures. Also you must certify compliance with certain of these terms and conditions as identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures.

Section 285.634 What activities require a revision to my COP and when will MMS approve the revision?

The lessee or operator must notify MMS in writing, including a detailed description, prior to conducting any activities not described in the COP, and we will determine if those activities require a revision to the approved COP. We will also conduct periodic reviews of the activities being conducted under an approved COP, to ensure that they fall within the scope of the COP. The COP will likely be required to be revised if the applicant plans to:

- Conduct activities not described in the approved COP;
- Change the size or type of facility or equipment used;
- Change the surface location of a facility or structure;
- Add another facility or structure not contemplated in the approved COP;
- Change the location of the onshore support base from one State to another or to a new base requiring expansion;
- Change the location of bottom disturbances by 500 feet (152 meters); or
- Make changes to any other activity specified by MMS.

A revision to the COP may require NEPA, CZMA, and other required compliance if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the COP if the revision is designed to prevent or minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

Section 285.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?

The applicant must notify MMS any time commercial operations are ceased, without an MMS approved suspension. We may cancel the lease if activities are ceased for an indefinite period that is longer than 6 months, and you must initiate the decommissioning process described in subpart I of this part.

Section 285.636 What notices must I provide MMS following approval of my COP? The applicant must notify MMS in writing of the following events, within the time periods provided:

- No later than 30 calendar days after commencing activities associated with the placement of facilities on the lease area under a Fabrication and Installation Report;
- No later than 30 calendar days after completion of construction and installation activities under a Fabrication and Installation Report; and
- At least 7 business days before commencing commercial operations.

Section 285.637 When may I commence commercial operations on my commercial lease?

The applicant may commence commercial operations 30 calendar days after the CVA has submitted to MMS the final report for the fabrication and installation review.

Section 285.638 What must I do upon completion of my commercial operations as approved in my COP?

After completing operations on your lease, you must initiate the decommissioning process as set forth in subpart I of this part.

Section 285.639 [Reserved]

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

Section 285.640 What is a General Activities Plan (GAP)?

The GAP describes proposed activities and operations for the assessment and development of the limited lease or grant including, if applicable, a project easement. A GAP contains the plans for conducting surveys, data gathering, and operations to characterize a limited lease or grant. A GAP must include a description of how surveys such as physical characterization surveys, resource assessment surveys, and baseline surveys would be conducted. It includes requirements for construction, activities, and decommissioning plans for all planned facilities, including onshore and support facilities, that you will construct and use for your project including project easements. It includes additional requirements for both simple and complex facilities, or if you intend to apply for a project easement. You must receive MMS approval of your GAP before you can begin activities on your lease or grant. For a ROW grant or RUE grant that is issued competitively, you must submit your GAP within 6 months of issuance. For a ROW grant or RUE grant issued noncompetitively, you must submit your GAP within 60 calendar days of the determination of no competitive interest. The MMS will evaluate your request for a noncompetitive grant and GAP simultaneously.

Section 285.641 What must I demonstrate in my GAP?

The GAP must demonstrate that the applicant plans and is prepared to conduct the proposed activities in a manner that:

- Conforms to all applicable laws (NEPA, MSA, ESA, and CZMA),

implementing regulations, lease provisions, and stipulations;
- Is safe;
- Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

Section 285.642 How do I submit my GAP?

This section provides the requirements for submitting the GAP. The applicant must submit one hard copy and one electronic version of the GAP to MMS. The applicant may submit information to cover the project easement with the original submission of the GAP or at a later time, as a revision to the GAP.

Section 285.643 [Reserved]

Section 285.644 [Reserved]

Contents of the General Activities Plan

Section 285.645 What must I include in my GAP?

This section lists the project-specific information that must be included in the GAP. The required information includes:
- Identifying information;
- The site assessment concept;
- Designation of operator;
- ROW, RUE or limited lease stipulation;
- A listing of all Federal, State, and local authorizations, approvals, or permits required;
- Financial assurance information; and
- Other information requested by MMS.

If activities include the installation of any facilities (e.g., single monopile meteorological tower, anchored vessels, transmission substations) the applicant must also submit the following information or a description of how this information will be acquired:
- A location plat;
- Geotechnical survey;
- General structural and project design, fabrication, and installation information;
- A description of deployment activities;
- A list of solid and liquid wastes generated;
- A listing of chemical products used;
- Shallow hazards;
- Socio-economic surveys;
- Archaeological resources;
- Geological survey relevant to the design and siting of the facility
- Biological survey;
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts;
- Description of any vessels, offshore vehicles, and aircraft used to support activities;
- Decommissioning and site clearance procedures;
- References cited in the plan; and
- Any additional information required by MMS.

The applicant may reference information and data discussed in other plans or documents previously submitted or that are otherwise readily available to MMS. If the project will require a project easement, multiple facilities, of the facility is complex or significant, the following additional information must be included in the GAP:
- The construction and operation concept;
- All cables and pipelines, including cables on project easements;
- A description of the deployment activities;
- A general description of the operating procedures and systems;
- A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities;
- CVA nominations for reports required in subpart G of this part;
- Construction schedule;
- Other information.

Section 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?

This section discusses the detailed information that must be submitted with the GAP to assist MMS in complying with NEPA and other relevant laws. For NEPA compliance the lessee or grantee must provide information on resources, conditions, and activities listed in this section, that could be affected by or could affect your proposed activities. In addition, the lessee or grantee must submit information for CZMA compliance including one copy of the consistency certification required by CZMA and required ''information'' and ''analysis'' as required in § 285.611.

Section 285.647 How will MMS process my GAP?

This section discusses how MMS will review the submitted GAP and determine if it contains the information necessary to conduct our technical and environmental reviews. The MMS will review the submitted GAP and determine if it contains all the required information necessary to conduct our technical and environmental reviews. If the GAP lacks information needed for the reviews, we will notify the applicant and request the necessary information. We will prepare appropriate NEPA documentation and forward one copy of the GAP and supporting documents to the State(s) CZM Agency. When appropriate, we will coordinate and consult with relevant State and Federal agencies as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. ESA and MSA) and provide to other State and Federal agencies relevant data and information pertaining to the proposed site assessment activities. We may request additional information during the review and approval process; if you do not provide this information MMS may disapprove your application.

After MMS completes the technical and environmental reviews, MMS may approve, disapprove, or approve with modifications your GAP. If we disapprove your GAP, we will provide the reasons for the disapproval and you will have an opportunity to revise and resubmit your GAP. If we approve your GAP, it will be subject to terms and conditions set forth by MMS. We will specify these terms and conditions and they will be incorporated into your GAP. Examples of the types of terms and conditions we may require include, but are not limited to terms and conditions from an ESA incidental take statement, conservation recommendations resulting from EFH consultations, and other safety, operational, or environmental protection measures. Also you must certify compliance with certain of these terms and conditions as identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures. If the project easement is approved, MMS will issue an addendum to the lease specifying the terms of the project easement.

Section 285.648 [Reserved]

Section 285.649 [Reserved]

Activities Under an Approved GAP

Section 285.650 When may I begin conducting activities under my GAP?

After MMS approves the GAP the applicant may begin conducting activities that do not involve the construction of facilities on the OCS.

Section 285.651 When may I construct OCS facilities proposed under my GAP?

Before beginning construction of any OCS facility or any related seabed disturbing activities proposed in the approved GAP, the lessee or grantee must complete the initial survey activities described in the approved GAP that relate to any of these activities and submit a report of the findings of those activities to MMS. The initial survey report must also identify the specific location on the limited lease or grant area that you intend to install the facility. If MMS determines that the proposed facilities are complex or significant, the lessee or grantee must submit the additional information required in this section.

The lessee or grantee may begin to construct and install the facility or facilities after MMS notifies the lessee or grantee that it has received the initial survey report and MMS has no objections. If MMS receives the initial survey report, but does not respond with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the report and the lessee or grantee may commence construction and installation of the facility or facilities.

If MMS has any objections to your initial survey report, we will notify the lessee or grantee within 60 calendar days of receipt. We may follow-up with written correspondence outlining specific objections to the initial survey report and request certain actions be taken to resolve MMS's objections. You may not begin construction until all objections have been resolved to MMS's satisfaction.

For a project easement, multiple facilities, or a facility deemed by MMS to be complex or significant, the applicant must submit a Facility Design Report; a Facility Fabrication and Installation Report; and a Safety Management System.

Section 285.652 How long do I have to conduct activities under an approved GAP?

For a limited lease, after MMS approves the GAP, then you must conduct the approved activities within 5 years, unless MMS renews the term. For an ROW grant or RUE grant, the time for conducting approved activities is provided in the terms of the grant.

Section 285.653 What other reports or notices must I submit to MMS, under my approved GAP?

This section lists the various reports and notifications that must be submitted to MMS. These include the initial survey report, notice of completion of construction and installation activities, annual compliance certification, an annual report of findings that result from conducting the activities approved under the GAP, and an annual compliance certification of certain terms and conditions of your GAP that MMS identifies. The compliance certification includes a listing and description of any mitigation measures and monitoring and their effectiveness. If you determine that any of the measures or monitoring were not effective, then you must include recommendations for new measures or monitoring methods. You must also submit an annual summary report of the findings from any activities that you conduct under your approved GAP and the results of those activities. The information from this report will be protected as provided in § 285.113.

Section 285.654 [Reserved]

Section 285.655 What activities require a revision to my GAP and when will MMS approve the revision?

The lessee or grantee must notify MMS in writing prior to conducting any activities not documented in the GAP. The MMS will determine if those activities require a revision to the approved GAP. We will also conduct periodic reviews of the activities being conducted under an approved GAP to ensure that they fall within the scope of the GAP. The GAP will likely be required to be revised if you plan to:

- Conduct activities not described in the approved GAP;
- Change the size or type of facility or equipment used;
- Change the surface location of a facility or structure;
- Add another facility or structure not contemplated in the approved GAP;
- Change the location of the onshore support base from one State to another or to a new base requiring expansion; or
- Change the location of bottom disturbances by 500 feet (152 meters).

The GAP requires revision if MMS specifies any changes to any other activity.

Revisions to the GAP will require NEPA and other required compliance if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the GAP if the revision is designed not to cause undue harm or damage to natural resources; or to sites, structures, or objects of historical or archaeological significance; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

Section 285.656 What must I do if I cease activities approved in my GAP before the end of my term?

The lessee or grantee applicant must notify the MMS upon ceasing activities under an approved GAP without an approved suspension. If activities are ceased for an indefinite period that exceeds 6 months, MMS may cancel the lease or grant under § 285.437 and the applicant must initiate the decommissioning process, as set forth in subpart I of this part.

Section 285.657 What must I do upon completion of approved activities under my GAP?

After completing the activities approved under the GAP, the applicant must initiate the decommissioning process, as required in subpart I of this part.

Cable and Pipeline Deviations

Section 285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?

This section discusses the requirements related to the construction of cables, pipelines, and facilities so as to minimize deviations from the approved plan under the limited lease or grant.

If MMS determines that a deviation occurred, you would be required to notify affected lessees or ROW/RUE grant holders and you would be required to relinquish the unused portion of the lease or grant. Substantial deviations could result in the cancellation of the lease or grant. MMS may delay the start of construction until MMS modifies the lease or grant.

Subpart G—Facility Design, Fabrication, and Installation

Overview

As indicated in the discussion of subpart F, your plan would include general descriptions for project design and facility fabrication and installation. Subpart G describes the various detailed technical reports that the MMS would

require lessees, operators, and grant holders to submit that address the final design, fabrication, and installation of facilities on a lease or grant. These reports would be submitted after MMS approves the SAP, COP, or GAP, as applicable.

Subpart G also describes a third party verification process that would require lessees, operators, and grant holders to use a certified verification agent (CVA), to verify and certify that projects are designed, fabricated, and installed in conformance with accepted engineering practices and with the submitted reports.

Certified Verification Agents: The CVA is responsible for conducting an independent assessment of the facility design and the fabrication and installation processes to ensure that facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the approved plans and applications.

The CVA will also ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA will certify and report to the lessee, operator, or grant holder; and MMS on the status of each phase included in the Facility Design Report and the Fabrication and Installation Report. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of each phase.

The MMS is aware of companies overseas that are capable of acting as certification bodies; we do not know the extent of the capabilities of domestic firms to provide CVA services. All of the major verification organizations (ABS, Lloyds, GL, DNV, etc.) operate worldwide. Their U.S. offices have access to expertise from around the world, so they could draw from their European affiliates as necessary. Also, the main areas of concern will involve structural issues related to project facilities. Current U.S. verifiers have years of offshore experience and could address structural issues for these facilities. They could hire outside or contract expertise as necessary to address turbine design and other aspects of the proposal. However, we request comments regarding both the domestic and international availability of CVAs that will be necessary to implement the OCS alternative energy program as described in the proposed rule.

Facility Design Report: This report provides MMS with a detailed description of the proposed facility or facilities and locations on the OCS. The lessee, operator, or grant holder is required to provide to MMS a complete set of structural drawings, structural loading information, detailed design criteria, and foundation information including mooring or tethering systems in the case of a floating facility. The CVA, nominated in your plan, will conduct an independent assessment of the design of the facility and ensure that it is designed to withstand the environmental and functional loads conditions appropriate for the intended service life at the proposed location. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of the design phase.

Fabrication and Installation Report: Under the proposed rule, fabrication and installation reports would be combined. The Fabrication and Installation Report describes the lessee/operator's or grant holder's plans for both the facility's fabrication (including the manufacture, assembly, and construction) and installation process. The report would include a schedule for fabrication and installation as well as detailed engineering and environmental information. The CVA, nominated in the SAP, COP or GAP, will conduct an independent assessment of the fabrication and installation phases. The CVA must use good engineering judgment and practices in conducting an independent assessment of fabrication and installation activities and ensure that these activities are conducted according to the approved applications. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of the fabrication and installation phase.

After fabrication and installation activities are completed, a company representative must submit a certification statement certifying that the fabrication and installation were conducted in accordance with accepted engineering practices and certified by an MMS approved CVA.

Other Options and Approaches: MMS considered incorporating design standards in these regulations. We are in the process of reviewing international standards and guidance documents for Alternative Energy systems including those developed by the British Wind Energy Association, Det Norske Veritas, Germanischer Lloyds, IEC, and Energistyrelsen (Denmark). We are also assessing the applicability of certain American Petroleum Institute (API) and International Standards Organization (ISO) standards for offshore alternative energy structures, operating systems, and management practices. As part of this assessment, we are participating in a project that compares the performance of Atlantic wind structures under IEC and API standards. This project is scheduled for completion in July 2008. The application of domestic and international standards will depend on the type of project, and regional and site-specific environmental conditions. The MMS may elect to incorporate into the regulations those standards that are expected to have widespread applicability to Alternative Energy projects. Other standards may be proposed by operators (or determined to be necessary by MMS) on a case-by-case basis.

Section by Section Discussion for Subpart G

Reports

Section 285.700 What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP?

This section lists the two reports required prior to installing facilities: (1) Facility Design Report; and (2) Fabrication and Installation Report. The MMS has 60 calendar days to review these reports and notify the applicant of any objections. If MMS does not have any objections, the applicant may begin to construct and install the facilities at the end of the 60 period.

If there are any objections, MMS will notify you either verbally or in writing within 60 calendar days of receipt. After notification of objections, MMS may follow-up with written correspondence outlining its specific objections to the report and requesting certain actions necessary to resolve the agency's objections. You cannot commence activities addressed in such report until any objections are resolved to MMS's satisfaction.

Section 285.701 What must I include in my Facility Design Report?

The Facility Design Report provides specific details of the design of any facilities, including cables and pipelines, that are outlined in your approved SAP, COP, or GAP. This report must demonstrate that the design conforms to the responsibilities of a lessee contained in these regulations. This section includes a list of required contents for the report and details the required contents of each element of the report. The report must include:

- A cover letter;
- A location plat;
- Front, side, and plan view drawings;
- A complete set of structural drawings;
- A summary of environmental data used for design;

- A summary of the engineering design data;
- A complete set of design calculations;
- Project-specific studies used in the facility design or installation;
- Description of the loads imposed on the facility;
- A geotechnical report; and
- A certification statement and location of records.

Section 285.702 What must I include in my Fabrication and Installation Report?

The Fabrication and Installation Report describes how facilities will be fabricated and installed in accordance with the design criteria identified in the Facility Design Report, the approved SAP, COP, or GAP; and generally accepted industry standards and practices. The Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to your responsibilities of a lessee contained in these regulations. This section includes a list of required contents for the report and details the required contents of each element of the report. The report must include:

- A cover letter;
- A schedule for fabrication and installation;
- Fabrication information;
- Installation process information;
- Federal, State, and Local Permits (e.g. EPA, USACE);
- Environmental information; and
- Project easement design.

Section 285.703 [Reserved]

Section 285.704 [Reserved]

Certified Verification Agent

Section 285.705 What is the function of a Certified Verification Agent (CVA)?

This section details the responsibilities of the CVA. The CVA must ensure that facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report, and ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA must provide reports of all incidents that affect the design, fabrication, and installation of the project and its components.

Section 285.706 How do I nominate a CVA for MMS approval?

A CVA must be nominated in the SAP, COP or GAP, as applicable. This section describes the process for nominating the CVA and the information that must be included in the qualifications statement. The section also requires that the verification be conducted by or under the direct supervision of registered professional engineers and prohibits conflict of interest by CVAs.

Section 285.707 What are the CVA's primary duties for facility design review?

The CVA must certify to MMS that the facility is designed to withstand the environmental and functional load conditions for the intended life at the proposed location. This section lists those elements of the design phase that the CVA must independently assess. These elements include:

- Planning criteria;
- Operational requirements;
- Environmental loading data;
- Load determinations;
- Stress analyses;
- Material designations;
- Soil and foundation conditions;
- Safety factors; and
- Other pertinent parameters of the proposed design.

For floating facilities, the CVA must ensure that the requirements of the U.S. Coast Guard for structural integrity and stability, e.g., verification of center of gravity, etc., are met.

Section 285.708 What are the CVA's primary duties for fabrication and installation review?

The CVA must certify to the MMS that the facilities are fabricated and installed as proposed in the approved Facility Design Report and the Fabrication and Installation Report. This section details the monitoring and inspection functions of the CVA during this phase of the project. It also requires the CVA to inform the lessee when procedures or design specifications are changed.

For the fabrication and installation review, the CVA must:

- Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;
- Monitor the fabrication and installation of the facility;
- Make periodic onsite inspections while fabrication is in progress;
- Make periodic onsite inspections while installation is in progress; and
- Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices, the approved COP, SAP, or GAP, and the Fabrication and Installation Report.

The report must identify the location of all records pertaining to fabrication and installation. The lessee or grantee may commence commercial operations or other approved activities 30 calendar days after MMS receives the certification report, unless MMS notifies the applicant within that time period of objections to the certification report.

The CVA must monitor the fabrication and installation of the facility to ensure that it is built and installed according to the Facility Design Report and Fabrication and Installation Report. If the CVA finds that fabrication and installation procedures are changed or design specifications are modified, the CVA must inform the applicant.

Section 285.709 When conducting on-site fabrication inspections, what must the CVA verify?

The CVA must make periodic on-site inspections while fabrication of the facility is in progress. The CVA must verify the following items during these inspections:

- Quality control by lessee (or grant holder) and builder;
- Fabrication site facilities;
- Material quality and identification methods;
- Fabrication procedures specified in the Fabrication and Installation Report, and adherence to such procedures;
- Welder and welding procedure qualification and identification;
- Structural tolerances specified and adherence to those tolerances;
- The nondestructive examination requirements, and evaluation results of the specified examinations;
- Destructive testing requirements and results;
- Repair procedures;
- Installation of corrosion-protection systems and splash-zone protection;
- Erection procedures to ensure that overstressing of structural members does not occur;
- Alignment procedures;
- Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and
- Status of quality-control records at various stages of fabrication.

For any floating facilities, the CVA must ensure that the requirements of the U.S. Coast Guard for structural integrity and stability, e.g., verification of center of gravity, etc., have been met. The CVA must also consider foundations, foundation pilings and templates, and anchoring systems and mooring or tethering systems.

Section 285.710 When conducting on-site installation inspections, what must the CVA do?

The CVA must make periodic on-site inspections while installation is in progress. The CVA must verify, survey, witness, survey or check the following items during facility installation:

- Loadout and initial flotation activities;
- Towing operations to the specified location, and review the towing records;
- Launching and uprighting activities;
- Submergence activities;
- Pile or anchor installations;
- Installation of mooring and tethering systems;
- Final deck and component installations; and
- Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

For a fixed or floating facility, the CVA must witness the loadout of the jacket, decks, piles, or structures from each fabrication site and the actual installation of the facility or major modification and the related installation activities.

For a floating facility, the CVA must witness the loadout of the facility; the installation of foundation pilings and templates, and anchoring systems; and the installation of the mooring and tethering systems.

The CVA must conduct an onsite survey of the facility after transportation to the approved location. The CVA must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

Section 285.711 What reports must the CVA submit for project modifications and repairs?

This section requires a report from a CVA on major repairs and modifications to certify that the repairs and modifications to the project conform with accepted engineering practices. The report must also identify the location of all records pertaining to the major repairs or major modifications.

A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility. A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

Section 285.712 What are the CVA's reporting requirements?

This section details when the CVA must submit reports to MMS and the lessee or grantee. This includes interim reports, as requested by the MMS. For each report the CVA must submit one electronic copy and one hard copy to MMS. In each report, the CVA must:

- Give details of how, by whom, and when the CVA activities were conducted;
- Describe the CVA's activities during the verification process;
- Summarize the CVA's findings; and
- Provide any additional comments that the CVA deems necessary.

Section 285.713 What must I do after the CVA confirms compliance with the Fabrication and Installation Report on my commercial lease?

After receiving confirmation of compliance with the Fabrication and Installation Report from the CVA, the lessee or grantee must notify MMS within 10 business days after commencing commercial operations.

Section 285.714 What records must I keep?

This section provides requirements for records that the lessee must maintain for the duration of the project, until MMS releases the required financial assurance. The lessee or grantee must compile, retain, and make these records available to MMS representatives. These records include:

- The as-built drawings;
- The design assumptions and analyses;
- A summary of the fabrication and installation examination records;
- The inspection results; and
- Records of repairs not covered in the inspection report.
- The lessee or grantee must record and retain the original material test results of all primary structural materials during all stages of construction. The lessee or grantee must provide MMS with the location of these records in the certification statement.

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments

Overview

This subpart describes requirements to prevent or minimize the likelihood of harm or damage to the marine and coastal environments and to promote safe operations, including their physical, atmospheric, and biological components. The MMS intends to use adaptive management practices to regulate alternative energy activities using a system whereby the operating industries would demonstrate and validate their performance. The MMS then will require adjustments to mitigation and monitoring activities on a case-by-case basis based on operating experiences. MMS will specify terms and conditions to be incorporated into the SAP, COP, or GAP. You must certify compliance with certain of those terms and conditions.

Environmental Management: While the proposed subpart H would not require use of an Environmental Management System (EMS), the MMS generally endorses the EMS concept and the general concepts of the International Organization for Standards standard 14001 (ISO 14001). We encourage companies operating under this Part to develop and implement EMS systems under ISO 14001 or other accepted industry standards. We believe that lessee and grantee development and implementation of an EMS would facilitate compliance with the certification requirements proposed by the MMS. However, an EMS would not be a substitute for and would not excuse the operator from complying with any requirements in this subpart. The environmental management provisions include specific requirements relating to threatened, endangered, and protected species, air quality, and archaeological and cultural resources.

Air Quality: Those equipment, facilities, and activities associated with alternative energy leases and grants (e.g., survey, construction, and maintenance activities) that emit air pollutants will be treated as ''OCS sources'' under section 328 of the Clean Air Act. When those OCS sources are located within the Gulf of Mexico West of 87.5°W longitude, the applicant would be required to comply with air quality provisions of this regulation. Any OCS sources located outside of that area will be regulated under the U.S. Environmental Protection Agency's air quality regulations at 40 CFR 55.

Section 328 of the Clean Air Act divided the control over air pollution from OCS sources between the Environmental Protection Agency (EPA) and the MMS. The MMS regulates air pollution from OCS sources located within the Gulf of Mexico west of 87.5° west longitude, this includes areas offshore of Texas, Louisiana, Mississippi and Alabama. Air pollution from OCS sources anywhere else (Pacific, Artic, and Atlantic coasts and the Gulf of Mexico east of 87.5° west longitude, offshore Florida) on the OCS is regulated by the EPA. The EPA may delegate this authority, refer to 40 CFR 55. Under the proposed regulations

MMS may request data and information regarding:

- Emission triggers and controls;
- Screening formulas and thresholds;
- Pollutant significance levels;
- Controls for emissions that exceed significance levels;
- Emission offsets;
- Prevention of Significant Deterioration areas;
- Modeling;
- Monitoring; and
- Meteorological data.

The applicant would be required to submit emissions information that is adequate for MMS to determine which air quality requirements apply to the project, if any. This information would be summarized in the NEPA document prepared for the proposed project.

Safety Management System: As proposed in this subpart, the safety management system would include, as applicable:

- Remote monitoring, control, and shut down capabilities;
- Emergency response procedures;
- Fire suppression equipment;
- Testing procedures; and
- Training.

These safety management provisions also cover maintenance and equipment shutdowns, including reporting and notification requirements, as well as requirements relating to both MMS and operator self inspections. The safety management system would be required to be submitted as part of the COP.

Maintenance and shutdowns: This section describes when operators would be required to notify MMS of shutdowns. Notification would be required when safety equipment is taken out of service for more than 12 hours. If safety equipment is removed from service for more than 60 calendar days, the operator must submit a written confirmation to MMS. The operator must also notify MMS when the equipment is returned to service.

Equipment Failure and Adverse Environmental Affects: These provisions address equipment failure and affects of environmental or other conditions. Operators would be required to notify MMS and repair any equipment failure, including pipelines and cables, as soon as practicable. The MMS may require an analysis to determine the cause of the failure. If environmental or other conditions adversely affect a cable, pipeline or facility, the operator must submit a corrective action plan to MMS; take the actions described in the plan; and submit a report to MMS of the action taken.

Inspections: Under the proposed rule, the MMS would conduct periodic scheduled and unscheduled inspections of OCS alternative energy facilities. The purpose of an MMS inspection is to ensure that an operator is conducting operations in accordance with all laws, regulations, and MMS-approved plans and to verify that proper safety equipment is correctly installed and working properly.

Operators would be required to develop a self-inspection program for all facilities that covers all structures above and below the waterline. Each operator must inspect for corrosion and other factors affecting the structural integrity of the facility. Operators also must submit annually a summary of inspections, including how they conducted the inspections; what equipment was used; what repairs were made, if any; and the structural condition.

Facility Assessments: This subpart also contains the requirements for facility assessments, incorporating sections 17.2.1 through 17.2.5 of the American Petroleum Institute Recommended Practice 2A–WSD (API RP 2A–WSD), as they relate to initiating facility assessments. This proposed provision would also require mitigation if a facility did not pass the assessment process described in API RP 2A–WSD. We selected the API RP 2A–WSD because there is a lack of standards for offshore alternative energy facilities and this standard has proven to be an effective assessment tool for other OCS structures in U.S. waters. The MMS would like comments on the use of this document for assessments and suggestions for other standards MMS should consider. This relates to the structure only and does not include production or transmission equipment.

Incident reporting: This proposed rule would require that operators report certain significant incidents associated with activities regulated under this part immediately to the Director. The initial report would be followed by a written report, within 15 calendar days. Significant incidents that require immediate notification are identified, and include any incidents resulting in fire, explosions or that involve a fatality. In addition, MMS requires submission of a written incident report within 15 calendar days following certain types of incidents, including those involving injuries that resulted in days absent from work, restricted work, or job transfer.

Other Options and Approaches

The MMS considered several approaches to the requirements in this subpart. With respect to safety management, we considered including detailed requirements. However, this would require separate requirements for each type of project. Given that offshore alternative energy is a new and developing industry, we determined that the best course is to address safety on a project-by-project basis. This approach requires operators to address certain safety issues in their plans.

For inspections and assessments we considered an approach that would require operators to conduct their own inspections, to hire 3rd party contractors, or to permit only MMS to conduct inspections. This joint approach puts the burden on both the operator and MMS to conduct inspections.

Facility assessment and incident reporting requirements mirror those that work for OCS oil and gas operations.

Section by Section Discussion for Subpart H

Section 285.800 How must I conduct my activities to comply with environmental requirements?

This section states the performance requirements for using trained personnel and technologies, precautions, and techniques to prevent or minimize the likelihood of harm or damage to human life and the environment. In addition you must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP.

Section 285.801 How must I protect threatened, endangered, and protected species?

Threatened and endangered and protected species are protected under the ESA as amended. This section describes the actions you must take if there is reason to believe that protected species may be affected by your operations. These actions include submitting mitigating measures designed to avoid or minimize adverse effects and incidental take of the species and habitat; and monitoring for the incidental take of the species and habitat. Protected species is defined in this section as, threatened and endangered species listed and designated critical habitat under the Endangered Species Act (16 U.S.C. 1531 *et seq.*); and all marine mammals, if the applicant has not already received authorization for incidental take of marine mammals as may be necessary under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*).

Section 285.802 How must I protect archaeological resources?

This section describes the process for determining if archaeological resources

are present, and the measures you must take to avoid disturbing those resources. As part of preparing the SAP, COP, GAP, or decommissioning application, the applicant, lessee, or grantee would be required to consult with MMS about archaeological resources. The applicant, lessee, or grantee would be required to include an archaeological report with the SAP, COP, GAP, or decommissioning application, if an archaeological resource is known to exist or if MMS has reason to believe that an archaeological resource may exist in the area of a proposed lease or grant. The MMS will specify the survey methods and instrumentation for conducting the archaeological survey and specify the contents of the archaeological report.

If an archaeological resource may be present, MMS will specify a minimum distance which the applicant, lessee, or grantee must maintain to avoid the potential resource, and where the applicant must locate the site of all proposed seafloor-disturbing activities to avoid the potential archaeological resource or establish that an archaeological resource either does not exist or will not be adversely affected by the proposed seafloor-disturbing activities.

The MMS may require the applicant, lessee, or grantee to conduct further archaeological investigations, using appropriate personnel, equipment, and techniques and submit the investigation report for review. We will notify the applicant, lessee, or grantee after determining that an archaeological resource exists and may be adversely affected by the proposed seafloor-disturbing activities. The applicant, lessee, or grantee (and all subcontractors or agents acting on behalf of the applicant, lessee, or grantee) would be required to keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until MMS makes an evaluation and tells the applicant, lessee, or grantee how to proceed.

Section 285.803 What must I do if I discover a potential archaeological resource?

This section describes the procedures if a potential archaeological resource is discovered while conducting any activity related to a project. It also includes additional requirements MMS may impose after such a discovery, such as conducting additional archaeological investigations. If a potential archaeological resource is discovered, you must immediately halt all seafloor-disturbing activities within the area of the discovery; notify the Director of the discovery within 72 hours; and keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until MMS has made an evaluation and tells you how to proceed.

The MMS may require additional investigations to determine if the resource is eligible for listing on the National Register of Historic Places under 36 CFR 60.4. This will be required if either the site has been impacted by your project activities or impacts to the site or to the area of potential effect cannot be avoided. If these investigations indicate that the resource is potentially eligible for the National Register of Historic Places, MMS will tell you how to protect the resource, or how to mitigate adverse effects to the site. Under section 110(g) of the National Historic Preservation Act, MMS may charge reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

Section 285.804 How must I protect essential fish habitats identified and described under MSA?

This section describes what you must do if there may be a sensitive benthic habitat (e.g., essential fish habitat, topographic features) that may be adversely affected by the approved activities. You would be required to submit mitigation measures designed to avoid or minimize the adverse effects. MMS may require additional surveys to define boundaries and avoidance distances. If MMS required additional surveys, we will specify the requirements, at that time.

Section 285.805 [Reserved]

Section 285.806 [Reserved]

Air Quality

Section 285.807 What requirements must I meet regarding air quality?

This section identifies the regulatory requirements for the different areas of the OCS. It also provides basic information on air quality modeling requirements. Projects authorized under this part must comply with the Clean Air Act and its implementing regulations. For a project located within the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico), the applicant must follow MMS implementing regulations under this part. For a project that is located anywhere else on the OCS, you must follow the appropriate implementing regulations promulgated by the U.S. Environmental Protection Agency under 40 CFR 55 and, appropriate sections under this part.

For air quality modeling performed in support of the activities proposed in plans under this part, you should contact the jurisdictional agency to establish a modeling protocol to ensure the agency's requirements are met and that the meteorological files used are acceptable before initiating the modeling work. You must submit three copies of the modeling report and three sets of digital files as supporting information to MMS.

Section 285.808 [Reserved]

Section 285.809 [Reserved]

Safety Management Systems

Section 285.810 What must I include in my Safety Management System?

You must submit a Safety Management System with the SAP, COP, or GAP. The Safety Management System must describe the following for all aspects of the project:

- How you will ensure the safety of personnel;
- Remote monitoring, control, and shutdown capabilities;
- Emergency response procedures;
- Fire suppression equipment, if needed;
- How and when you will test your Safety Management System; and
- How you will demonstrate that personnel are properly trained.

This section also requires that you demonstrate compliance, identify any impacts and any mitigation measures that are not effective, and make recommendations for new mitigation measures.

Section 285.811 [Reserved]

Section 285.812 [Reserved]

Maintenance and Shutdowns

Section 285.813 When do I have to report removing equipment from service?

This section requires you to notify MMS when safety equipment is taken out of service for more than 12 hours and to submit written confirmation of any equipment that is removed from service for greater than 60 calendar days. It also requires that MMS be notified after the repairs are complete, including the nature of the repairs and the date returned to service.

Section 285.814 [Reserved]

Equipment Failure and Adverse Environmental Effects

Section 285.815 What must I do if I have facility damage or an equipment failure?

This section requires that all facility damage or equipment failures be repaired as soon as possible, and that MMS be notified of the repairs as soon as practicable. It also requires that you submit a report describing the repairs to MMS, and that MMS may require an analysis of the failure.

Section 285.816 What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility?

If environmental or other conditions adversely affect a cable, pipeline, or facility, these regulations require you to submit a plan of corrective action to MMS. In addition, the applicant must take the remedial action described in the plan, and submit a report of the remedial action taken.

Section 285.817 Through 285.819 [Reserved]

Inspections and Assessments

Section 285.820 Will MMS conduct inspections?

The MMS conducts inspections of OCS facilities and any vessels engaged in activities authorized under this part to verify that the applicant is operating in accordance with the OCS Lands Act, the regulations, lease stipulations, conditions of the grant, approved plans, and other applicable laws and regulations, and to determine whether the proper safety equipment is installed and operating properly.

Section 285.821 Will MMS conduct scheduled and unscheduled inspections?

The MMS will conduct both scheduled and unscheduled inspections of your facilities.

Section 285.822 What must I do when MMS conducts an inspection?

These regulations require you to make the area of the lease or grant, all facilities on the lease or grant, and records of design, construction, operation, maintenance, repairs, or investigations available to MMS for inspection. You must retain all records as required, and certain records must be retained until MMS releases your financial assurance.

Section 285.823 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you reasonable expenses for the expenses related to food, quarters, and transportation provided for MMS representatives while they inspect the project facilities.

Section 285.824 How must I conduct self inspections?

This section requires the applicant to develop an annual self inspection plan describing both above-water and below-water structural inspections and describing how corrosion protection will be monitored. It also requires that you submit an annual report that summarizes the results of the inspections.

Section 285.825 When must I assess my facilities?

This section requires the applicant to use the assessment requirements of American Petroleum Institute Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms—Working Stress Design (API RP 2A–WSD) to conduct assessments of structures, when needed, based on the platform assessment initiators in API RP 2A–WSD. The applicant must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD and perform other assessments as required by MMS.

Section 285.826 Through 285.829 [Reserved]

Incident Reporting and Investigation

Section 285.830 What are my incident reporting requirements?

This section requires that all incidents that occur on the area covered by a lease or grant and that are related to operations conducted under your lease or grant be reported to MMS.

Section 285.831 What incidents must I report and when must I report them?

This section requires that all fatalities, incidents requiring evacuation of a person(s) from a facility, fires, explosions, incidents and collisions resulting in property damage greater than $25,000, incidents resulting in structural damage, crane incidents, and incidents that damage or disable safety systems be reported to MMS immediately with written follow-up within 15 calendar days. It also requires that any injuries that result in one or more days away from work and incidents that require personnel to muster for evacuation be reported in writing within 15 calendar days.

Section 285.832 How do I report incidents requiring immediate notification?

This section requires for incidents that require immediate notification, you notify the Director orally immediately after aiding the injured and stabilizing the situation. This section also describes the information required in the notification.

Section 285.833 What are the reporting requirements for incidents requiring written notification?

This section describes the specific information that must be reported in writing to the MMS. It allows you to submit a form prepared for another agency to fulfill the requirement as long as it contains all the information required by MMS. The MMS may subsequently require additional information about an incident on a case-by-case basis.

Subpart I—Decommissioning

Overview

This subpart describes requirements for decommissioning OCS alternative energy facilities and associated structures including the submission of advance plans, applications, and notices to the MMS. Co-lessees and co-grant holders are all jointly and severally responsible for meeting decommissioning obligations on their respective leases or grants. All facilities, including pipelines, cables, and other structures and obstructions, must be removed when they are no longer used for operations but no later than one year after the termination of the lease, ROW grant, or RUE grant.

Other Options and Approaches

The MMS considered delaying regulations on decommissioning, because there are no structures in place, and large scale commercial projects will not be developed for several years. It may be 20–25 years before a large scale commercial project would be decommissioned. We know that small scale projects for technology testing and site assessment and ROW grants and RUE grants would involve structures that may be decommissioned after a short time (2–5 years). Also, MMS believes it is important to provide all of the project requirements at this time, so that lessees and grantees will know what would be expected at the end of the project's life. Decommissioning information is required for any plans that involved a structure (SAP, COP, or GAP), in order to meet NEPA

requirements. MMS also needs information on decommissioning to assess financial assurance amounts.

Section by Section Discussion for Subpart I

Decommissioning Obligations and Requirements

Section 285.900 Who must meet the decommissioning obligations in this subpart?

Co-lessees and co-grant holders are jointly and severally responsible for the decommissioning responsibilities for facilities on a lease or grant, including all obstructions.

Section 285.901 When do I accrue decommissioning obligations?

Decommissioning obligations accrue when the lessee or grant holder installs, constructs, or acquires a facility, cable, or pipeline; or creates an obstruction.

Section 285.902 What are the general requirements for decommissioning?

This section is a general overview of the decommissioning process:

- After your lease terminates, the lessee or grant holder has 1 year to decommission and clear the seafloor of all obstructions created by activities on the lease or grant.
- To begin decommissioning, the lessee or grant holder must submit a decommissioning application. This can be submitted at any time, but no later than 2 years before any intended decommissioning operation.
- Once MMS approves the decommissioning application, a decommissioning notice is required before beginning any decommissioning activity. The decommissioning notice is required to keep MMS informed of decommissioning activities.
- If an archaeological resource is discovered while decommissioning, activities around the resource must stop and the lessee or grant holder must inform MMS.
- Biologically sensitive features and items of archaeological interest must be avoided and protected during decommissioning and site clearance activities.
- MMS will direct the lessee or grant holder on what action to take.

Section 285.903 [Reserved]

Section 285.904 [Reserved]

Decommissioning Applications

Section 285.905 When must I submit my decommissioning application?

While the conceptual decommissioning plans would be included in the SAP, COP or GAP, in many cases the project will not be decommissioned until many years after approval of the plan, therefore a decommissioning application is required. A decommissioning application may be submitted at any time, but no later than 2 years before any intended decommissioning operation. However if a lease or grant is cancelled, relinquished, or otherwise terminated, the application must be submitted within 90 calendar days.

Section 285.906 What must my decommissioning application include?

The application would include such items as: an identification and description of the facilities to be removed; a proposed decommissioning schedule; a description of the removal methods; description of site clearance activities; plans for transporting and disposing of the removed facilities; a description of those resources, conditions, and activities that could be affected by or could affect the proposed decommissioning activities; results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site; mitigation measures to protect archaeological and sensitive biological features during removal activities; and a statement whether or not divers will be used to survey the area after removal to determine any effects on marine life.

Section 285.907 How will MMS process my decommissioning application?

The MMS will review the proposed decommissioning and site clearance activities to ensure compliance with all applicable laws, regulations, and other requirements. The MMS will compare the decommissioning application with the decommissioning general concept in the approved SAP, COP or GAP to determine what technical and environmental reviews are needed. The operator may be required to revise the approved SAP, COP, or GAP, if MMS determines the proposed decommissioning activities would result in a significant change in the SAP, COP, or GAP; or requires any additional permits; or proposes activities not previously identified and evaluated in the SAP, COP, or GAP. MMS may begin the appropriate NEPA and other regulatory reviews as required.

After completing the technical and environmental reviews MMS may approve, approve with conditions, or disapprove the decommissioning application. If MMS disapproves decommissioning application, the operator must resubmit the application to address the concerns identified by MMS.

Section 285.908 What must I include in my decommissioning notice?

This section describes what needs to be included in the decommissioning notice. A decommissioning notice is separate from the decommissioning application and can only be submitted after MMS approves the decommissioning application. The decommissioning notice is submitted at least 60 days before you plan to begin decommissioning activities. The decommissioning notice includes any changes from your decommissioning application, and your decommissioning schedule. MMS will evaluate your decommissioning notice and may require additional changes to your decommissioning application before you can begin decommissioning activities.

Facility Removal

Section 285.909 When may MMS authorize facilities to remain in place following termination of a lease or grant?

In the decommissioning application, the operator may request that certain facilities authorized in the lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws. The MMS will approve such requests on a case-by-case basis considering potential impacts to the marine environment; competing uses of the OCS; impacts on marine safety and national defense; maintenance of adequate financial assurance; and other factors determined by the Director.

If MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances. In the decommissioning application, the operator may request that certain facilities authorized in the lease or grant be converted to an artificial reef or otherwise toppled in place.

Section 285.910 What must I do when I remove my facility?

All facilities must be removed to a depth of 15 feet below the mudline and you must verify to MMS that you have cleared the site, within 60 days after you remove a facility.

Section 285.911 [Reserved]

Decommissioning Report

Section 285.912 After I remove a facility, cable, or pipeline, what information must I submit?

Within 30 calendar days after removing a facility, the operator must submit a written report to MMS summarizing removal operations. The report must include a summary of the removal activities including the date it was completed; a description of any mitigation measures you took; and if explosives were used, a statement signed by an authorized representative that certifies that the types and amount of explosives used in removing the facility were consistent with those in the approved decommissioning application.

Compliance With an Approved Decommission Application

Section 285.913 What happens if I fail to comply with my approved decommissioning application?

If the lessee, grant holder, or operator fails to comply with the approved decommissioning plan or application MMS may call for the forfeiture of your bond or other financial guarantee and the lessees or grant holders remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

Subpart J—Rights-of-Use and Easement for Energy and Marine-Related Activities That Use Existing Facilities on the OCS

Overview

This subpart establishes general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This subpart also includes general provisions that explain how MMS will approve and regulate such alternate use activities on the OCS. We propose to authorize such activities through the issuance of an Alternate Use Right-of-Use and Easement (Alternate Use RUE).

This subpart explains how applicants request an Alternate Use RUE, how MMS will decide whether to issue Alternate Use RUEs, and how Alternate Use RUEs will be competitively issued (if MMS determines that competitive interest exists). Once an Alternate Use RUE is issued by MMS, this subpart provides details on the term of such authorizations, required payments to MMS, necessary financial assurance, as well as other administrative issues such as assignment, suspension, and termination of Alternate Use RUEs.

This subpart also includes provisions regarding decommissioning of approved alternate use facilities. In addition to the proposed provisions in this subpart J, MMS has proposed associated revisions to MMS's existing oil and gas decommissioning regulations found in 30 CFR. part 250, subpart Q, that clarify and expand on an oil and gas platform owner's obligations for decommissioning, and when such decommissioning obligations may be suspended for approved alternate uses.

The statutory authority for this subpart is paragraph 8(p)(1)(D) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)). Under this authority, as delegated by the Secretary, the MMS may approve activities that use, for energy or other marine-related purposes, facilities that are currently or were previously used for other activities authorized under the OCS Lands Act.

Regulatory Options Considered and Selected for Proposal

A threshold issue that MMS considered when framing its proposal for regulating alternate use activities authorized under subsection 8(p) of the OCS Lands Act was the appropriate level of specificity for the proposed rule with respect to setting payments, required financial assurances and the term for which an Alternate Use RUE would remain in effect. MMS considered setting specific values for each of these issues. Ultimately, however, MMS elected not to set such values in these proposed regulations because there are a wide variety of acceptable alternate uses of existing OCS facilities, and MMS has not yet evaluated any specific proposals for alternate use projects. MMS believes it is premature to establish specific payment, financial assurance and other terms. MMS believes that it is important to retain flexibility when considering new alternate use proposals for existing OCS facilities. MMS intends, on a case-by-case basis, to establish payment, financial assurance and term provisions for an individual Alternate Use RUE taking into account the unique aspects of each individual proposal, including the specific types of activities proposed and their associated effects on the OCS and marine environment.

As MMS gains experience considering alternate use proposals and overseeing alternate use activities, we may revise these regulations accordingly. Similarly, if MMS receives a significant number of similar alternate use proposals, it may consider issuing regulations or other guidance that set specific criteria for all alternate use activities of a particular type.

Subsection 8(p) of the OCS Lands Act requires MMS to make a determination of competitive interest for any alternate use proposal. MMS may only proceed in its evaluation of an alternate use proposal noncompetitively after MMS determines, following public notice of a proposed alternate use activity, that there is no competitive interest.

Alternate use of existing OCS facilities requires the allocation of responsibilities between the existing lessee and facility owner (*e.g.*, the oil and gas lessee and/or operator) and the holder of the Alternate Use RUE. This is particularly true with respect to decommissioning responsibilities and required financial assurance. On this issue, three potential options were considered by MMS:

(1) A regulatory framework whereby the existing lessee or operator would assume either primary or joint responsibility for the decommissioning obligations associated with approved alternate use activities, and would increase its required financial assurance as necessary to cover all additional obligations associated with approved alternate use activities.

(2) A regulatory framework whereby the holder of the Alternate Use RUE would assume either primary or joint responsibility for the decommissioning obligations associated with the existing facility (e.g., the oil and gas platform), and would provide financial assurance in an amount sufficient to cover both the proposed alternate use activities as well as obligations associated with the eventual removal or other decommissioning of the existing facility.

(3) A regulatory option that divided equitably the responsibilities for decommissioning and necessary financial assurance between the existing lessee and/or operator and the holder of the Alternate Use RUE.

MMS believes that Option (1) above would place an unfair financial burden on the existing lessee and facility owner. Similarly, MMS did not select the regulatory approach under Option (2) because we believe it would place an unfair financial burden on the alternate use applicant and would likely deter potentially advantageous alternate uses of existing platforms because of the significant financial responsibilities associated with platform removal. MMS selected Option (3) as an appropriate and equitable balance of responsibilities among the relevant parties.

MMS acknowledges that the parties may negotiate among themselves who will be ultimately financially responsible for decommissioning responsibilities associated with an existing platform, and MMS encourages

such negotiations and those that encourage responsible alternate uses of existing platforms. However, MMS will not look to the terms of any private contract when identifying parties responsible for fulfilling decommissioning requirements under these proposed regulations.

Section by Section Discussion for Subpart J

Regulated Activities

Section 285.1000 What activities does this subpart regulate?

This provision describes the scope of activities regulated by this subpart. The authority for Alternate Use Rights-of-Use and Easements (Alternate Use RUEs) was established in paragraph 8(p)(1)(D) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)). Under this authority, as delegated by the Secretary, the MMS may approve activities that use, for energy or other marine-related purposes, facilities that are currently or were previously used for other activities authorized under the OCS Lands Act. However, the MMS may not approve alternate use activities under subsection 8(p)(1)(D) of the OCS Lands Act if those activities are authorized by another statutory authority, including: the OCS Lands Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), or other applicable law.

A couple of examples are helpful to illustrate the types of activities that would be subject to this subpart. In the first example, an individual seeks to use an existing oil and gas platform in the Gulf of Mexico to conduct certain offshore aquaculture activities. Offshore aquaculture activities on the OCS are not currently authorized by any other statutory authority. Therefore, MMS may authorize the use of an existing facility for offshore aquaculture activities using an Alternate Use RUE. In the second example, an individual seeks to convert an existing oil and gas platform in the Gulf of Mexico to a deepwater port. Activities associated with the construction and operation of a deepwater port on the OCS are authorized under the Deepwater Port Act of 1974, as amended, and regulated jointly by the U.S. Coast Guard and U.S. Maritime Administration. Since such deepwater port activities are authorized by the Deepwater Port Act, the activities do not require an Alternate Use RUE under this subpart. While the MMS may not issue an Alternate Use RUE for deepwater port activities (or other activities that are authorized by other Federal law) that would use an existing OCS structure, MMS approvals may be required under either part 250 or part 282 of this subchapter for activities that could impact existing MMS-approved operations on an existing facility, as well as for deferring decommissioning requirements upon the termination of an OCS lease.

Use of the term ''existing facility'' or ''existing platform'' in this subpart is not intended to limit such facilities to those that are currently in place as of the time of publication of this proposed rule. Any facility that, at the time of an alternate use proposal, is situated on the OCS and has been authorized by MMS under the OCS Lands Act is potentially eligible for consideration under this subpart. Therefore, such ''existing facilities'' could include oil and gas facilities, facilities constructed in association with sand, gravel, sulfur or any other mineral resource development approved under the OCS Lands Act, as well as alternative energy facilities authorized though this part.

As stated in paragraph (c) of this provision, MMS has the discretion to authorize alternate use activities on existing OCS structures that are currently in active operation, or limit alternate use activities to existing OCS structures that are no longer in operation and would otherwise be subject to removal. MMS will consider these issues on a case-by-case basis taking into account the unique operating considerations for each proposed alternate use activity as well as the associated operations on the existing OCS platform.

Section 285.1001 Through 285.1003 [Reserved]

Requesting an Alternate Use RUE

Section 285.1004 What must I do before I request an Alternate Use RUE?

Before submitting a request to the MMS for issuance of an Alternate Use RUE, the applicant must contact the owner of the existing OCS facility as well as the current lessee of the area in which the facility is located and reach preliminary agreement regarding the alternate use of the structure. Since the platform or other facility is the private property of the owner, MMS could not issue an Alternate Use RUE unless the alternate use was tentatively agreed to by the owner of the facility. If the alternate use applicant is also the lessee and owner of the existing OCS facility, a preliminary agreement regarding alternate use is not needed.

This provision does not require the owner of the facility and lessee of the area in which the facility is located to give a final, unconditional approval for the proposed alternate use. This initial agreement among the parties need only state that the owner and lessee are aware of the proposed alternate use activity, and have no immediate objections to such activities. This preliminary agreement does not need to be in any specific prescribed form.

Section 285.1005 How do I request an Alternate Use RUE?

The MMS will consider requests for an Alternate Use RUE on a case-by-case basis provided such requests comply with the requirements of this provision. An applicant's request for an Alternate Use RUE must include a summary of the proposed activities that would involve use of the existing OCS facility, a statement affirming that the proposed activities are not otherwise authorized by other MMS regulations or any other Federal law, and satisfactory evidence that the applicant qualifies to hold a lease, ROW, or RUE on the OCS. When summarizing the proposed activities under an Alternate Use RUE, the applicant must include all of the information identified in § 285.1005(a). Any request to MMS for an Alternate Use RUE must also include the signatures of the alternate use applicant, the owner of the existing OCS facility, and the lessee of the area in which the existing facility is located.

If an existing OCS facility proposed for an Alternate Use RUE is in operation on an active OCS lease, the alternate use applicant as well as the lessee or owner of the structure must consider what approvals and plan modifications may be required under part 250 or part 282 of this subchapter with respect to impacts on operations regulated by those parts.

Section 285.1006 How will MMS decide whether to issue an Alternate Use RUE?

The MMS will consider requests for an Alternate Use RUE on a case-by-case basis. The MMS will evaluate all proposals to ensure that the proposed activities that would involve the use of existing OCS facilities can be conducted in a manner that is safe and protects the marine, coastal and human environment; does not inhibit or otherwise restrain orderly development of OCS mineral and energy resources; and avoids serious harm or damage to, or waste of, any natural resources or property. Regardless of whether the existing OCS facility is currently in use or no longer in use and subject to removal, the MMS has the discretion whether or not to approve and issue an Alternate Use RUE. Since Alternate Use RUEs would require the MMS to

regulate the development, operation, and eventual decommissioning of such alternate use projects, the MMS may determine that it has insufficient resources or subject matter expertise to properly regulate such projects. However, the MMS may partner with other Federal agencies with relevant expertise to ensure proper regulation of certain types of alternate use activities.

Section 285.1007 What process will MMS use for competitively offering an Alternate Use RUE?

Paragraph 8(p)(3) of the OCS Lands Act requires that Alternate Use RUEs be issued on a competitive basis unless the Secretary determines after public notice of the proposed Alternate Use RUE that there is no competitive interest.

Before initiating the competitive process, the MMS will first determine whether an applicant's proposal contains the information necessary to be deemed acceptable as set forth in § 285.1005. The MMS will then determine whether the proposed activity that would involve the use of an existing OCS facility is one that is (1) subject to MMS authority under paragraph 8(p)(1)(D) of the OCS Lands Act, and (2) the type of activity that the MMS has the necessary expertise and resources to regulate effectively. If the answer is yes to both (1) and (2), the MMS will issue a public notice in the **Federal Register** to determine if there is competitive interest in using the facility for other alternate use activities. The MMS will specify a time period (e.g., 30 days) from the date of issuance of the public notice for those who are interested in the use of that facility to respond to MMS, indicating that interest. Indications of competitive interest are not required to provide all the information required in § 285.1005. If there is no expression of competitive interest within the timeframe expressed in the public notice, the MMS will presume that there is no competitive interest and will commence review of the applicant's proposal for an Alternate Use RUE.

If there are indications of competitive interest received by the MMS within the timeframe in the public notice, the MMS will proceed with a competitive offering. The MMS will request that each competing applicant submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease, ROW, or RUE on the OCS. The MMS may impose a time period to submit the requested information, but one that would allow sufficient time for competing applicants to prepare the necessary information requested. The MMS may subsequently request additional information to adequately evaluate competing proposals. At this stage, competing applicants are not required to seek or obtain the consent of the lessee or owner of the existing OCS facility.

The MMS will evaluate the competing proposals to determine whether the proposed activities appear to be compatible with existing operations at the facility and are activities that it has the expertise and resources available to regulate effectively. If more than one proposal initially appears feasible, the MMS may commence an environmental review under NEPA, where each of the proposals is analyzed. Based on its NEPA analysis, the MMS may select one or more of the alternative proposals as potentially acceptable.

Once the MMS has chosen one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, it will notify the competing applicants and submit each acceptable proposal to the lessee and owner of the existing OCS facility. The lessee and owner of the existing OCS facility may accept any one of the proposals deemed acceptable by the MMS. If the lessee and owner of the facility agree to accept one of the proposals, through a written acknowledgement submitted to MMS, the MMS will complete efforts to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals deemed acceptable by the MMS, the MMS will not issue an Alternate Use RUE.

Activities under subpart J will include full analysis as required by NEPA and other applicable laws. Compliance with the CZMA will follow 15 CFR 930, subpart C, for competitive RUE offerings and 15 CFR 930, subpart D, for noncompetitive RUE offerings.

Figure 5 shows the process envisioned for granting access to existing OCS facilities for alternate use activities.

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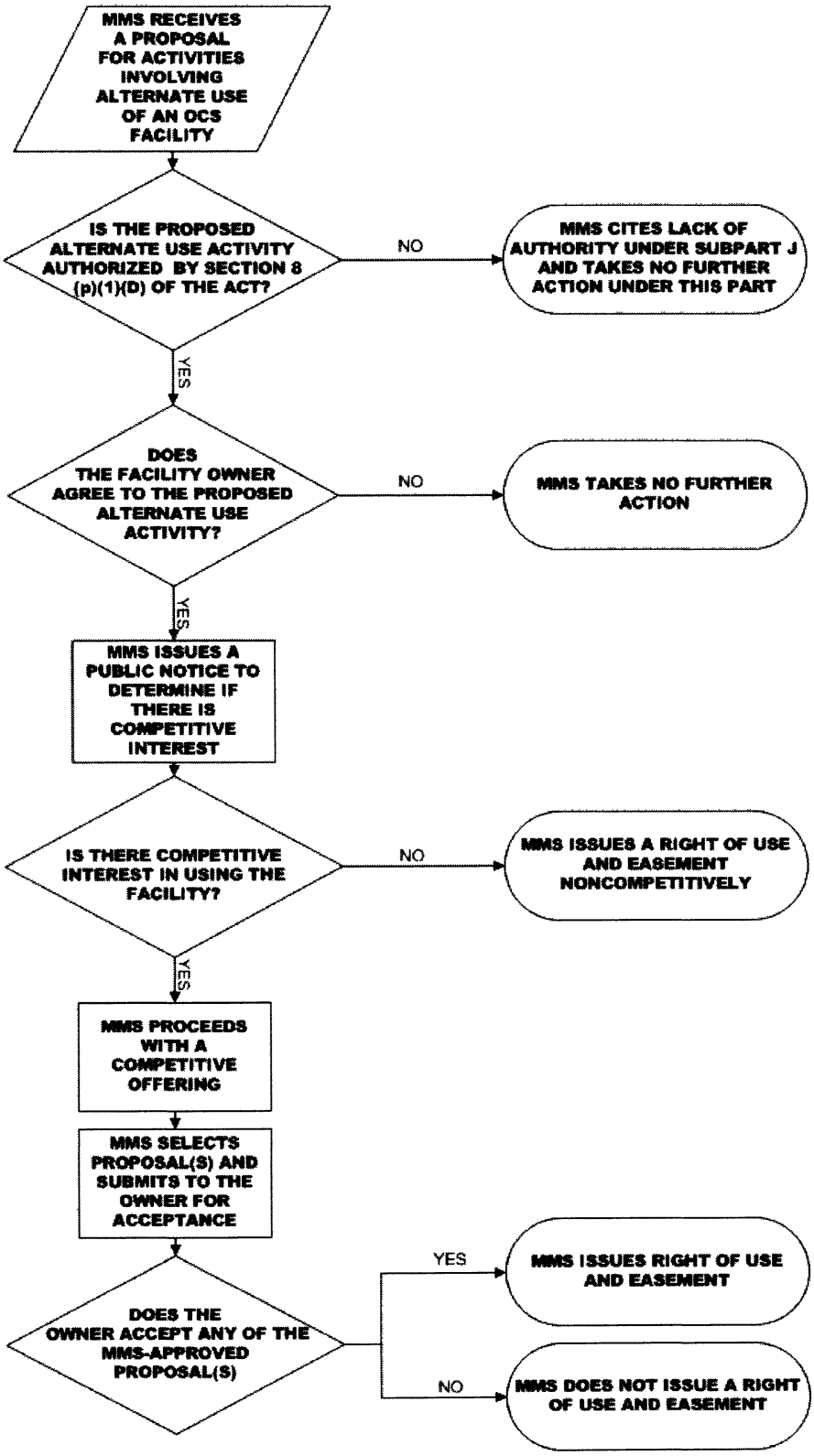
Figure 4. PROPOSED PROCESS FOR USING EXISTING FACILITIES FOR ALTERNATE USE ACTIVITIES



Section 285.1008 [Reserved]

Section 285.1009 [Reserved]

Alternate Use RUE Administration

Section 285.1010 How long may I conduct activities under an Alternate Use RUE?

This provision explains that MMS will determine the duration of Alternate Use RUEs on a case-by-case basis considering pertinent factors including the size, scale and type of the proposed alternate use activities. Considering the scope of potential alternate use activities that could reasonably occur on the OCS, MMS does not believe that it is appropriate to set a specific term in the regulations for Alternate Use RUEs.

This provision also provides that MMS will consider requests for renewal of an Alternate Use RUE on a case-by-case basis, at MMS's discretion.

Section 285.1011 What payments are required for an Alternate Use RUE?

This provision provides that MMS will determine rentals or other charges on a case-by-case basis and such rentals or other charges will be set forth in the Alternate Use RUE. The MMS will charge rentals or other charges for Alternate Use RUEs to ensure a fair return to the United States, as required by paragraph 8(p)(2) of the OCS Lands Act (43 U.S.C. 1337(p)(2)). There are many different potential alternate uses of the OCS that could be authorized (e.g., offshore aquaculture, research, education, and recreation) and each of these potential uses could have different effects in terms of the exclusion of other valuable uses of the OCS area. Certain alternate use activities could require that a significant portion of an OCS area be excluded from other potentially valuable uses (i.e. a large offshore aquaculture project). MMS would consider such exclusivity requirements for a potential alternate use activity in determining a fair return to the United States. The MMS would calculate the rentals or other charges for Alternate Use RUEs taking into account the areal extent of the alternate use activity, MMS resources needed for regulating such activities, and the exclusion in that area of competing uses.

Section 285.1012 What financial assurance is required for an Alternate Use RUE?

This provision makes clear that MMS will require that holders of Alternate Use RUEs provide financial assurance in an amount sufficient to cover all obligations under the Alternate Use RUE, including decommissioning obligations. Holders of Alternate Use RUEs will be required to retain such financial assurance until MMS determines that all obligations have been fulfilled to MMS satisfaction. The provision also provides that MMS may increase or decrease required financial assurance amounts as appropriate provided that financial assurance will always be required in an amount necessary to satisfy all obligations under the authorizing instrument.

MMS has determined not to define in the regulations what specific forms of financial assurance will be deemed acceptable. MMS will consider all forms of financial assurance that are deemed acceptable by MMS under its other regulatory programs, and will consider other proposals for financial assurance on a case-by-case basis.

Unlike what is proposed for alternative energy under this part and what is established for oil and gas leasing under Part 256, MMS has determined that the regulations for alternate use activities should not set specific minimum levels for financial assurance. Considering the range of potential activities that could be approved for an Alternate Use RUE, MMS has determined that it would be more appropriate to set required financial assurance levels on a case-by-case basis.

Section 285.1013 Is an Alternate Use RUE assignable?

This provision provides that Alternate Use RUEs may be assigned to eligible assignees. This provision sets forth the requirements that must be satisfied for MMS to approve an assignment request. At this time, it is not clear to what extent Alternate Use RUEs will be requested and approved by MMS. Therefore, we are not creating a standard MMS form for assignments at this time.

Paragraphs (d) and (e) of this provision describe to what extent assignors and assignees are responsible for obligations associated with an Alternate Use RUEs arising both before and after MMS approval of an assignment.

Section 285.1014 When will MMS suspend an Alternate Use RUE?

This provision explains that MMS may suspend activities authorized under an Alternate Use RUE as provided in this section. It is important to note that MMS may suspend activities authorized under an Alternate Use RUE even if there has been no finding of fault by the grant holder. The holder of an Alternate Use RUE may be in full compliance with the terms and conditions of its authorizing instrument, but other circumstances outside the control of the grant holder may require MMS to suspend activities in order to comply with judicial decrees, for reasons of national security or defense, to avoid unsafe activities or interference with lessee's operation and to protect against potential environmental damage. For this reason, any such suspension will extend the term of the Alternate Use RUE for the period of the suspension.

Section 285.1015 How do I relinquish an Alternate Use RUE?

This provision explains that the holder of an Alternate Use RUE may relinquish the authorization at any time provided it complies with the requirements of this section. MMS would officially approve any relinquishment after it has determined that the requestor has complied with all necessary requirements, including the payment of any outstanding rentals (or other payments) and fines. The relinquishment would take effect on the date that MMS officially approves the request.

Section 285.1016 When will an Alternate Use RUE be cancelled?

This provision explains under what circumstances MMS may initiate cancellation of an Alternate Use RUE. The provisions of this section are similar to the cancellation provisions under subpart D of this part, but includes an additional provision for cancellation when continued activity under an Alternate Use RUE is determined to be adversely impacting ongoing lease activities on the existing OCS facility (e.g., an associated oil and gas production platform on which alternate use activities have been authorized).

Section 285.1017 [Reserved]

Decommissioning an Alternate Use RUE

Section 285.1018 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

This provision explains that the holder of an Alternate Use RUE will be responsible for removing all structures and completing all other decommissioning activities associated with an approved alternate use activity. The Alternate Use RUE would set forth specific requirements for decommissioning, as determined by the MMS based on the approved alternate use activity.

As set forth in the proposed conforming amendments to Part 250, subpart Q, included in this Notice of Proposed Rulemaking, approval of an

Alternate Use RUE will not relieve the original lessee (e.g., the original oil and gas lessee) from its accrued decommissioning obligations. If the MMS approves an Alternate Use RUE with respect to an existing facility located on a lease that has terminated, or a lease subsequently terminates following approval of an Alternate Use RUE, the MMS will defer the commencement of decommissioning activities related to that facility for the duration of the Alternate Use RUE. Such deferral would be limited, however, to the facility that is associated with the alternate use activities, and the lessee would be required to complete all other decommissioning activities associated with the lease. Unless the lessee and owner of the existing facility are also the holder of the Alternate Use RUE, the lessee and owner of the existing facility are not responsible for decommissioning associated with an Alternate Use RUE. Similarly, the holder of an Alternate Use RUE is not responsible for decommissioning with respect to the existing facility. To avoid confusion or potential subsequent dispute between the parties, MMS anticipates setting forth in the Alternate Use RUE instrument the specific decommissioning obligations pertaining to the alternate use activities.

Section 285.1019 What are the decommissioning requirements for an Alternate Use RUE?

This provision explains that decommissioning requirements for Alternate Use RUEs will be established on a case-by-case basis after considering the specific alternate use proposal. These specific decommissioning requirements will be set forth in detail in the authorizing instrument. This provision also explains that all decommissioning activities would be required to be completed within one year of termination of the Alternate Use RUE.

Accompanying Part 250 and Part 290 Amendments Relating to Part 285 Proposed Rule

To ensure that the regulations proposed under 30 CFR part 285 do not conflict with existing MMS regulations under 30 CFR part 250 or 30 CFR part 290, we are proposing conforming changes to those regulations, as appropriate. Most of these proposed changes are to the regulations at 30 CFR part 250, subpart Q, Decommissioning. These regulations are being revised to address the alternate use of existing facilities on the OCS. We are also proposing a revision to 30 CFR part 290, to clarify that requests for reconsideration of an MMS decision concerning a lease bid authorized pursuant to Part 285 do not follow the procedures outlined in Part 290.

Part 250 Amendments Accompanying Part 285 Proposed Rule

Section 250.1703 What are the general requirements for decommissioning?

The proposed amendment to this provision clarifies that MMS may authorize temporary exceptions to the general requirement to remove all platforms and other facilities, as provided in §§ 250.1725(a) and 250.1730.

Section 250.1725 When do I have to remove platforms and other facilities?

The proposed amendment to this paragraph (a) is intended to elaborate on the types of activities that may be authorized by MMS on an existing platform or other facility that would, in effect, defer or suspend the removal obligation that would otherwise be triggered under § 250.1725. The amended language identifies activities on an existing oil and gas platform or other facility that would support OCS oil and gas production and transportation, or would otherwise support a valuable energy-related or marine-related purpose.

The proposed amendments to this provision are not intended to provide an exhaustive list of all potential alternate use activities that may be deemed acceptable by MMS. MMS will consider all potential alternate use proposals of existing platforms or other facilities on the OCS and determine whether they provide for a valuable use of our Nation's OCS and could be conducted in a fashion that is safe, protective of the environment and otherwise in accordance with MMS's role as steward of the OCS.

The proposed amendments to this provision are not intended to indicate that MMS would approve all such alternate use activities. MMS has discretion to approve or disapprove of any alternate use proposal under the OCS Lands Act and its role as steward of the OCS. In considering whether to approve or disapprove a proposed alternate use activity, MMS would require that the applicant post adequate financial assurances to MMS or another Federal agency that ensure the platform or other existing facility will be properly decommissioned upon completion of the approved alternate use activity.

The proposed amendments to this provision are also intended to clarify that MMS may consider proposals for liquefied natural gas (LNG) facilities (regasification terminals or, potentially, liquefaction facilities) that would make use of existing OCS platforms or other facilities. MMS may not approve the construction or operation of an LNG facility—as responsibility for approval of construction and operation of marine LNG facilities rests with the U.S. Coast Guard and U.S. Maritime Administration—but may authorize the alternate use of an existing OCS facility that was originally approved under the OCS Lands Act. An MMS approval for alternate use or reuse of an existing facility would be required from MMS before making use of such a facility for LNG activities. Approval for an alternate use proposal involving an existing LNG facility is not subject to the proposed provisions in Part 285, subpart J, because subsection 8(p) of the OCS Lands Act does not apply to activities previously authorized under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

Section 250.1730 When might MMS approve partial structure removal or toppling in place?

The proposed amendment to this provision is intended to clarify that the scope of § 250.1730 is limited to proposals under the Artificial Reef Program administered by the U.S. Army Corps of Engineers.

Section 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

This proposed provision is intended to define each party's decommissioning responsibilities once MMS has approved an Alternate Use RUE pursuant to the provisions proposed in Part 285, subpart J. MMS has determined that the most equitable approach to allocating decommissioning responsibilities among the platform owner and lessee and the holder of the Alternate Use RUE is to leave each party responsible for the decommissioning activities associated with the structures approved pursuant to each party's authorizing instrument. Therefore, the existing platform owner retains its ultimate responsibility to decommission the platform, but this obligation may be deferred until completion of the activities approved under the Alternate Use RUE. Similarly, the holder of the Alternate Use RUE is responsible to complete all decommissioning obligations associated with the approved alternate use activity once those alternate use activities are completed according to the terms of the Alternate Use RUE.

Part 290 Amendment Accompanying Part 285 Proposed Rule

Section 290.2 Who may appeal?

The proposed amendment to this provision is intended to clarify that requests for reconsideration of an MMS competitive award of a lease, RUE or ROW to a bidder pursuant to Part 285 do not follow the procedures outlined in Part 290.

Commenting Procedures

MMS is seeking comments on all aspects of this proposed rulemaking. However, we have identified areas that are of particular interest to us and we believe of interest to the regulated community and other interested parties. Comments on these items are requested throughout the rulemaking and are summarized here for your convenience in submitting comments. When you submit comments please identify the subpart and section number you are commenting on.

Subpart A—General Provisions

MMS seeks comment on all items in subpart A, specifically we are seeking comments on:

1. Is this subpart informative?
2. Is it easy to locate needed information?
3. Is it easy to read and follow?
4. Does it include the appropriate topics?

Subpart B—Issuance of OCS Alternative Energy Leases

We invite comments on the following items:

1. Proposed types of leases. Do these lease types (commercial, limited) adequately address the possible uses allowed under these regulations?
2. Proposed leasing process, including the proposed acquisition fee and procedures for paying for associated NEPA analysis.
3. Proposed process for obtaining public input on unsolicited applications and the considerations for determining whether competitive interest exists.
4. All aspects of the proposed sale process, including the proposed criteria for determining competition, proceeding with competitive auctions, and awarding leases.
5. Whether the length and structure of the proposed terms would inhibit legitimate efforts to develop alternative energy projects on the OCS and on alternatives that might be better.

Section 285.200 Proposed project easement provision.

Section 285.201 Considerations other than geographic overlap of multiple proposals to determine whether or not there is a need to conduct a competitive lease sale in an area. We invite comments on any of the proposed approaches. In particular, what do you think is the capability of package bidding to ensure a fair return and to induce an efficient allocation of leases?

The proposed approach, as well other possible approaches such as intertract competitive auctions, to address this issue.

We invite comments on the proposed priority of commercial leases over limited leases.

The proposed approach for developing appropriate lease documents.

Section 285.203 Issues relevant to coordination and consultation with Federal agencies and State and local governments.

Section 285.204 The proposed process for choosing areas to make available for leasing and the proposed means for mapping and describing those areas.

Section 285.206 The proposed provisions governing lease size.

Section 285.211 The most useful way to describe areas we decide to make available for alternative energy leasing.

Section 285.212 Information that we should request to identify alternative energy interest in general or specific OCS areas.

The handling of data and information.

Section 285.213 How the CZMA process for competitive leasing could be expedited.

Section 285.215 Whether this process provides sufficient information and notice to encourage competition for prospective alternative energy sites.

Section 285.220 The relative merits of proposed alternative auction formats for leasing OCS acreage for alternative energy projects and on alternatives that might be more effective. Whether allowing bidders to define a set of tracts on which they wish to submit a package bid would increase interest in a sale, generate higher aggregate bonus bids, and help ensure that bidders acquire their primary tracts of interest.

Section 285.221 Which of the proposed bidding systems is most appropriate for alternative energy leases and why.

Section 285.222 The appropriate bid acceptance considerations and the potential use of intertract competition.

Section 285.223 The likelihood of receiving tied bids and on the proposed provisions for selecting a winner in that case.

Section 285.224 Any difficulties the procedures for formally issuing a lease might cause potential lessees. Would holding an additional round of bidding be more appropriate than resolving a tie by lot or, perhaps, by offering a joint lease?

Section 285.225 The fairness of the proposed bid appeal process.

Section 285.230 Whether and how any requested information may inhibit requests and on whether this fee will serve its intended purpose.

Section 285.231 Whether our proposal not to return your acquisition fee if you choose not to bid is appropriate.

The proposed SAP or GAP deadlines and the proposed NEPA and CZMA compliance procedures.

Section 285.238 This concept for making areas of the OCS available for alternative energy research.

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative Energy Activities

We invite comments on the following items:

1. The proposed provisions for ROWs and RUEs, as well as project easements.
2. The handling of data and information.
3. The provisions on coordination and consultation.
4. The proposed CZMA compliance procedures.
5. The areas available for ROW grants and RUE grants.
6. The proposed ROW and RUE size provisions.
7. The provisions for ROW and RUE terms.
8. The ROW and RUE provisions, forms, financial assurance, and administration.

Subpart D—Lease Administration

We invite comments on all of the proposed provisions. We invite comments on the following items:

1. Noncompliance.
2. Assignments.
3. Alternatives such as open-ended lease terms and automatic renewals.
4. Criteria for consideration in lease renew decisions.

Subpart E—Payments and Financial Assurance Requirements

We invite comments on the following items:

1. Whether or not information from other sources supports the conclusion that proposed rates in this rule are in line with fixed terms used elsewhere and would constitute a small fraction of expected offshore alternative energy project costs. If not, please provide such alternative information.
2. Payments to the landowners.
3. We conclude that the proposed size of our payments would not adversely

affect the rate of offshore alternative energy development. We request comments on whether the results of this analysis accurately characterize the basic economics of anticipated OCS alternative energy projects.

4. Issues related to implementation of revenue sharing.

Section 285.500 Suggestions concerning how the payment procedures should be structured and what the content of alternative energy payment procedures should include.

Section 285.501 Setting the deposit amount and deposit forfeiture requirements, including the extent to which these amounts and requirements should be related to the type of auction format employed.

Section 285.502 For a noncompetitive lease, whether to require an additional payment equal to the difference between the minimum bid we would have set for a competitive sale offering in the same area and the acquisition fee, as an alternative approach.

Whether the size and treatment of acquisition fees proposed in this section is appropriate and whether or not it would discourage expression of any legitimate interest in a possible alternative energy lease.

Section 285.503 Whether the baseline rental fee proposed in this section would be appropriate for lessees and fair to the public.

Section 285.504 Whether there is any valid reason to charge a different rental for limited leases than for commercial leases.

Section 285.505 1. Whether there are operating fee procedures that are as efficient and fair as the one specified here for alternative energy activities. Please include detailed examples and explanations for any alternatives suggested.

2. The frequency of the review and adjustment of the capacity factor.

Section 285.506 Whether this is the most appropriate way to set rentals for easements and whether the size of the rental is appropriate.

Section 285.507 Whether this is the most appropriate way to set rentals for easements, and whether the size of the rental is appropriate.

Subpart G—Facility Design, Fabrication, and Installation

We request comments regarding both the domestic and international availability of CVA's that will be necessary to implement the OCS alternative energy program as described in the proposed rule.

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments

The MMS would like comments on the use of API RP 2A–WSD for assessments and suggestions for other standards MMS should consider. This relates to the structure only and does not include production or transmission equipment.

Procedural Matters

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, on this rule or the Draft EA, 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.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866. We have made the assessments required by E.O. 12866 and the results are:

(1) The proposed rule would not 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. The regulations would govern an industry that is at an early stage of development but which could have developed even without the subject regulations.

The proposed rule would do two things: (1) It would set forth clear regulatory requirements, and (2) it would institute payments to the Government as a fair return for use of public lands. While the proposed program would generate new receipts for the U.S. Government primarily in the form of cash bonuses, acquisition fees, rentals, and operating fees, the aggregate annual amounts of these payments, as estimated in the fiscal cost-benefit study supporting this rulemaking, were found to be below $100 million for at least the next 15 years, and then slightly above that level in only in intermediate and high case scenarios. (See ''Fiscal Cost-Benefit Analysis to Support the Rulemaking Process for 30 CFR 285 Governing Alternative Energy production and Alternative Uses of Existing Facilities on the Outer Continental Shelf,'' Final Technical report prepared for MMS by Industrial Economics, Incorporated, MMS 2007–050, February, 2008.)

Any projections beyond that time horizon should be considered highly speculative given the early stage of development in this industry on the OCS. The payments to Federal agencies represent a transfer of money from one set of entities to another, not the anticipated effect of the regulations on real resources in the economy. The magnitudes of the required fees and payments, either set in this rule or at time of sale of the leases, are intended primarily to assure receipt of fair value for the lease rights and subsequent activities, not to influence post-lease decisions about the allocation of alternative energy resources. Thus, while the new rule would provide for an increase in the flow of payments from industry to the Federal government and, in some cases, to coastal States, these payments are not intended, nor do we expect them, to create or prevent industry activities that generate alternative energy products. In fact, a key purpose of this rule is to foster an important new industry by reducing regulatory uncertainty.

For the purposes of the fiscal cost-benefit study, the baseline condition is a continuation of the regulatory regime that existed prior to passage of the EPAct, under which other Federal agencies, such as the Army Corps of Engineers (in the case of wind energy) and the Federal Energy Regulatory Commission (FERC, in the case of wave and ocean current energy), assumed primary responsibility for reviewing and permitting alternative energy projects on the OCS. The regulatory alternative to the baseline, as described in this rulemaking, is the MMS program authorized by Section 388 of the EPAct, comprising the granting of property rights, collection of payments for alternative energy and other uses of the OCS (primarily in the form of lease bonuses, rentals and operating fees), and establishment of a comprehensive ''cradle-to-grave'' regulatory program for authorizing alternative energy activity on the OCS. The analysis further considers three different sets of fiscal terms (identified as the ''Low,'' ''Intermediate,'' and ''High'' payment cases), which vary in the way fees and rental payments are calculated. Rental would be paid in each of the payment cases before the construction and operation of a generation facility. During construction and operations, an annual operating fee would be charged in the Intermediate and High cases, while

MMS specified that a rental payment be substituted for an operating fee in the Low case. These payment cases are explained in Section 4 of the report MMS 2007–050. The analysis considers projects that are constructed and that begin operations (i.e., begin to generate electricity for sale) or that are in development during the 20-year period from 2008–2027. While these projects would have revenue and cost impacts that extend beyond this period (based on 20 years of electricity generation over an assumed 25-year operational term), the only fiscal impacts reported are those that occur during the period 2008–2027. The cost side of the analysis comprises the Federal government's costs to implement the program that will administer the proposed regulation.

In accordance with OMB guidance, we estimated the present value of cumulative net revenues in constant dollars for the Baseline, Low, Intermediate, and High payment cases assuming real discount rates of three and seven percent. These results were computed from project level nominal revenues which were aggregated annually for years from 2008 through 2027, then deflated and discounted as end-of-year cash flows back to 2008. Section 8(p)(2)(B) of OCS Lands Act requires the distribution of 27 percent of fiscal revenues to the appropriate coastal states, when a project is located partially or wholly in the area extending 3 nautical miles seaward of state submerged lands. The revenue estimates reported for this analysis were adjusted assuming that 40 percent of the projects included in the development forecast would be subject to the revenue sharing provision.

As of January 1, 2008, at a three percent discount rate, the present value of cumulative net Federal revenues over the 20-year period of the analysis ranges from approximately −9.3 million and −$57.3 million in the Baseline and Low cases, respectively, to approximately $357 million and $538 million in the Intermediate and High payment cases, respectively. When a 7 percent discount rate is applied, the present value of cumulative net Federal revenues over the period of the analysis ranges from approximately −$7.8 million and −$46.5 million in the Baseline and Low cases, respectively, to approximately $190 million and $291 million in the Intermediate and High payment cases, respectively. The significant difference in net revenues is attributable to the inclusion of operating fee payments to MMS in the latter two cases. The preliminary development forecast was comprised of 76 projects that would proceed through the pre-development period of their respective lease terms, and could at least begin construction before 2027, the last year of the period of analysis. We evaluated the economics of each project and found that 58 might be considered viable by virtue of having a calculated internal rate of return (IRR) greater than or equal to 11 percent, under the payment requirements of the Baseline (no payments), Low and Intermediate cases. In fact, the categorization of wind energy projects by IRR does not vary between payment cases, with the exception of three 500 MW wind projects that drop below an 11 percent IRR in the High case. This analysis shows that the magnitude of MMS payments under the assumed cases should not have a significant influence on decisions to invest in lease development on the OCS.

Categorization of the results by technology and region highlights the impact of wind energy projects and the Atlantic region, which, respectively, account for over 99 percent and approximately 79 percent of the present value cumulative net revenues in the Intermediate payment case. None of the nine wave energy projects included in our preliminary development forecast cleared the IRR of 11 percent due to their location exclusively in the Pacific region, particularly the Pacific Northwest. Low electricity prices in this market are influenced by the presence of large, lower cost onshore hydroelectric resources. Wave energy projects developed over the next 20 years might be more economically viable in nearer-shore environments that are subject to State rather than MMS jurisdiction. In contrast, all 15 of the ocean current projects included in the preliminary development forecast have IRRs greater than or equal to 11 percent, primarily because of their relatively high capacity factors (80 percent compared to 38 percent for wind and 35 percent for wave).

We then analyzed the impact of renewable portfolio standard financial incentives on project viability. Total viable projects might be reduced by 25 percent without revenue from renewable energy certificate (REC) sales. For the Intermediate case, we found that the number of viable projects modeled in the development forecast would drop from 58 to 43 without revenue from the sale of RECs. Therefore, renewable portfolio standards implemented by coastal states could be essential to the economic success of many OCS projects.

We also analyzed the effect that elimination of the present Federal PTC could have on the viability of the wind, wave and current projects in the preliminary development forecast. This more focused analysis was made by assuming the PTC would not be extended beyond an expiration date of December 31, 2008. In that event, we determined that only 33 of the 76 projects might have IRRs of greater than or equal to 11 percent, regardless of the payment case analyzed. The difference in the number of projects constructed, 25 fewer than the 58 viable for the Baseline, Low and Intermediate cases, may be less if a change to economic conditions creates a benefit approximately equivalent to the PTC. Absent such a change, a reduction in total viable projects of more than 40 percent could occur if the PTC is not available, making this incentive the most significant for investors. Thus, we concluded that project viability is more sensitive to the availability of the PTC benefit than REC benefits, or any of the fiscal requirements assumed in the payment cases.

We further reviewed 12 of the 25 projects that might not be constructed without the PTC, to discern how much the MMS payments could detract from the value of the PTC. Specifically, the ratio of MMS payments over PTC value was calculated: (1) For the 10 years that the PTC would be in effect for each project, and (2) over the life of each project. Lease interests would discount the values at private rates and the government would discount with social rates. To simplify comparison of the results, ratios were calculated with undiscounted nominal dollar values. Ratios for the 10 years that the PTC would be in effect for each project fell within a range of 4.5 to 6.5 percent. Ratios calculated using the total of all payments made to MMS over the life of the project, divided by the total value of the PTCs over the 10 years following the date that a project is placed in service, ranged from about 11.0 percent to 14.5 percent. The second set of ratios are higher than the first set, because payments made before and after the 10 year PTC period are considered. The MMS recognizes that the alternative energy program payment requirements would effectively lower the value of the PTC. However, the payment cases analyzed would not reduce the value of the PTC by a significant amount. Of greater importance, this analysis seems to imply that the elimination of the requirement to make payments to MMS will not increase the rate of alternative energy development on the OCS.

In developing the fiscal cost-benefit analysis and specifically regarding the financial cash flow model, a number of generalized assumptions were made, due in large part to the absence of reliable data for offshore alternative

energy technologies. The following are some issues that may warrant additional examination.

The IEc study relied upon a literature review to develop the necessary assumptions used in the financial cash flow model. A major component driving the economics of an offshore alternative energy project is the capital cost assumption, specifically the rate at which the capital cost is forecasted to decline. This capital cost reduction results from a combination of ''learning'' and economies of scale. Learning based capital cost reductions for the offshore alternative energy technologies are based on publicly available studies and are summarized in table 2–3 for offshore wind and table 2–4 for wave and ocean current. Economies of scale, as observed through the capital cost reduction of projects as a function of increasing capacity (MW) is assumed only for U.S. offshore wind energy projects. Table 2–3 on page 14 in the IEc study gives the assumed capital costs (2007$/kW) of U.S. offshore wind energy for representative sizes of 150 MW, 500 MW, and 1,000 MW. Given the immaturity and lack of commercial development of wave and ocean current energy technologies, no economies of scale assumptions were made for these technologies.

As the preliminary forecast projected by the IEc study are not project specific, default capacity factors for each of the three offshore alternative energy projects considered in the IEc study were used and are provided in Table 4–6, which lists each of the key inputs of the cash flow model and a description of the corresponding assumptions. The default capacity factors of 38 percent, 35 percent, and 80 percent for wind, wave, and ocean current projects, respectively, were used.

The preliminary forecast of project development on the OCS is an indication of the projected growth rate of the industry, both on the individual technology level and aggregately as the offshore alternative energy industry. However, as an industry that is in its infancy, it is difficult to predict the path of this industry's development with any degree of certainty. To that extent, the IEc study bases the preliminary forecast on non-economic considerations as a starting point, such as likely regions where development will occur, and provides refinements using the cash flow model to determine the economic viability of each individual project.

Additionally, the offshore alternative energy technologies considered in the IEc study are limited to offshore wind, wave, and ocean current as these represent the technologies that have a reasonable probability of becoming commercially viable in the 20-year period that defines the scope of the IEc study. In this vein, hydrogen production on the OCS may be realized in the future and thus be governed by this proposed rule.

Due to the uncertainty regarding the nature and scope of interest in alternative uses of existing OCS facilities, a qualitative analysis of the potential impacts of a number of these activities was conducted in the IEc study in chapter 8. In terms of the net fiscal impact that these alternative activities entail, the magnitude of such impacts are likely to be insignificant.

MMS solicits comments regarding the assumptions made in the fiscal cost-benefit analysis. In particular, the agency solicits comments on the reasonableness of assumptions on: (1) Economies of scale; (2) learning and cost reduction; (3) capacity factors; (4) projected growth rate of the industry; (5) hydrogen production; (6) technology characterization; (7) alternative uses of existing facilities; (8) regulatory and legislative climate assumed in the analysis.

(2) The proposed rule would not create a serious inconsistency with or otherwise interfere with the actions taken or planned by any other agency except for the Federal Energy Regulatory Commission. By its terms, section 388 of the EPAct avoids this problem by granting to the Secretary of the Interior authority to authorize and regulate alternative energy activities on the OCS only to the extent such activities were not previously authorized by other laws, such as the Deepwater Port Act or the Ocean Thermal Energy Conversion Act. Therefore this rule does not address activities such as LNG storage or ocean thermal energy conversion.

The Federal Energy Regulatory Commission has entertained applications for licenses for wave and current energy projects under the authority of the Federal Power Act. In comments on the ANPR for this rulemaking, FERC asserted that its jurisdiction to license such projects extends ''at least 12 nautical miles offshore.'' Under the Federal Power Act, the seaward limit of the authority is the territorial sea, and was understood to be a belt extending three miles from the coastal baseline at the time that FERC's statutory authority was established. When President Reagan issued his proclamation on December 27, 1988, extending the territorial sea to 12 miles, he expressly stated ''nothing in this Proclamation * * * extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests or obligations derived therefrom.'' Presidential Proclamation 5928, 54 FR 777. Nothing in the Federal Power Act or its legislative history expressed an intent to allow changes in the definition of territorial sea for international law purposes to change the extent of the jurisdiction conferred therein.

There is no inconsistency or conflict between the Interior program for the outer continental shelf, which commences three miles from the coastline (or three leagues in the case of Texas and the Florida Gulf Coast), and FERC licensing of projects within the historic territorial sea. MMS has conferred with FERC staff in an effort to reduce unnecessary inconsistencies between the regulatory requirements applicable to FERC licensed projects within the territorial sea and those that would operate under these proposed MMS rules. Such coordination is essential because it is foreseeable that some projects may straddle the boundary between the territorial sea and the OCS. However, the agencies have not been able to resolve their conflicting views as to whether the Federal Power Act grants FERC jurisdiction ''to at least 12 nautical miles,'' which would constitute ''other applicable law'' under section 8(p), that would limit Interior authority to oversee wave or current projects.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The proposed rule does not contain any requirements or regulations that would alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This proposed rule would raise novel legal or policy issues because the rulemaking would establish a new regulatory program for the development of alternative energy on the OCS and to allow for alternate uses of existing OCS facilities. For these reasons OMB determined that this is a significant rule.

Primarily for the reason that the proposed rule would raise novel legal or policy issues, MMS was required to conduct an economic analysis of this rule. Prior to the passage of the EPAct, the Federal Government lacked the authority to oversee all aspects of alternative energy project development on the OCS, including siting, construction, operation, and decommissioning. Additionally, prior to the passage of the EPAct, the Federal Government lacked the authority to seek payments from private interests for use of our Nation's OCS. These regulations

will provide the framework for MMS's management of an Alternative Energy-Alternate Use Program. This program will create a system that provides a degree of regulatory certainty to those proposing, planning, or potentially financing an offshore alternative energy project on the OCS, as it will address lease and grant issuance, activity authorization, payment collection, financial assurance, and project decommissioning.

As described above, MMS is required to conduct an economic (''benefit-cost'') analysis of this rulemaking because it has been determined to be a significant regulatory action, as defined in Executive Order 12866. Discussions between MMS and OMB resulted in a determination that the appropriate analysis of the proposed rulemaking is one that focuses on the financial impacts of the rule over a 20-year period (2008–2027). While financial revenues (i.e., the revenues the Federal Government will receive due to economic activity that occurs under this rule) are traditionally considered a transfer payment, in this analysis they are treated as a ''benefit.'' The cost side of the analysis comprises the Federal Government's costs to implement the program that will administer the proposed rules. In addition, as required by the Regulatory Flexibility Act (RFA) of 1980 (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBRFA) and Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'')), this analysis considers whether the financial payments made by the developers of regulated projects to MMS will significantly affect a substantial number of small entities.

The baseline condition, against which the impact of the proposed rule is to be compared, is a continuation of the regulatory regime that existed prior to the EPAct, under which the Army Corps of Engineers (Corps) assumed principal responsibility for reviewing and permitting wind energy projects and the Federal Energy Regulatory Commission (FERC) asserted authority for wave and ocean current projects on the OCS. For the purposes of this analysis, we assume that the project development forecast is independent of the regulatory regime; the locations, types, and timing of development would be the same with or without the MMS program contemplated by the EPAct. MMS is considering only one alternative to the baseline—a regulatory program under which MMS grants property rights, collects payments for activities conducted on the OCS, and establishes a comprehensive ''cradle-to-grave'' regulatory program for authorizing alternative energy activity. Within this alternative, MMS considered three payment cases: a ''Low'' payment case requiring only rental payments for the use of Federal lands, an ''Intermediate'' payment case that also included a fixed generation capacity fee, and a ''High'' payment case that included a graduated generation fee.

Given the considerable uncertainty in forecasting activity levels for a nascent industry, MMS used expressed interest by potential developers, estimates of wind resources, regional electricity prices, and other information to create a development scenario that included 103 (predominantly wind energy) projects that at least reached the application stage during the 2008–2027 period of analysis. Based on the financial viability results of cash flow model—given size, capacity factor, capital costs, operations and maintenance cost, regional electricity prices, availability of financing, financial incentives (e.g., the Production Tax Credit), and other factors—63 of these projects were assumed to begin operations during the 20-year period of analysis and an additional 13 were assumed to drop out of the process prior to beginning operations, primarily for financial reasons. MMS estimated the personnel and other costs of reviewing all 103 applications and the additional costs of processing applications that made it to the approval stage, as well as any other regulatory compliance costs through 2027 for those projects that went into operation. On the ''benefits'' side, MMS also estimated the revenues to be received from developers under each payment case through 2027. (Payments to the Government beyond 2027 were considered only to assess project viability and the potential effects of this action on small entities.)

Under the Intermediate and High payment cases, respectively, MMS estimated that net revenues (to the Federal Government) would turn positive about 2015 and about 2014, increasing to over $100 million by 2025 and by 2022. Net revenues would be negative throughout the period of analysis under the Low payment case. However, as noted above, these revenue numbers indicate the effect on the Federal Treasury, not on the economy. Given the assumptions agreed upon with OMB, the industry would have developed with or without the new rule and, therefore, this rule would not determine the amount of money to be generated and spent but rather who would spend it.

Regulatory Flexibility Act (RFA)

Under the requirements of the RFA (5 U.S.C. 601 *et seq.*), as amended by SBREFA and Executive Order 13272, Federal agencies must consider the potential distributional impact of new rules on small businesses, small governmental jurisdictions, and small organizations. MMS prepared an initial regulatory flexibility analysis to determine the impacts of this proposed regulation on small entities. Based on this analysis, we concluded that these regulations will impact a substantial number of small entities, however the regulations would not have a significant economic impact on these small entities when compared to the economic impact the regulations will have on large entities. Please see the following discussion for the basis of our conclusion.

Discussion of the Regulatory Flexibility Act Analysis

Number of Small Entities To Which the Rule Will Apply

The North American Industry Classification System (NAICS) code for the industry affected by the proposed rule is 221119 (Other Electric Power Generation). The definition for this code is:

> This U.S. industry comprises establishments primarily engaged in operating electric power generation facilities (except hydroelectric, fossil fuel, nuclear). These facilities convert other forms of energy, such as solar, wind, or tidal power, into electrical energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.

An entity within this classification is ''small'' if it is ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours'' (MWh). Some new companies may be created, solely to develop one or more offshore alternative energy projects that combined will not have a total electric output greater than 4 million MWh. Some companies, either through a combination of projects or through the incorporation of offshore alternative energy projects into a larger portfolio of electricity generating stations, will exceed the 4 million MWh threshold.

Given the newness of the offshore alternative energy industry, it is difficult to develop an accurate count of the number of entities that will or may be subject to this rule in order to determine whether the rule will affect a ''substantial'' number of small entities.

Several companies have formally or informally expressed interest in being granted access to the OCS for electricity generation purposes. At least 40 to 50 entities are identifiable as potential project or technology developers with a focus on utilizing offshore wind, wave, or ocean current resources. The U.S. Census Bureau's 2002 Economic Census reported 411 entities within NAICS code 221119. However, for the purposes of this analysis MMS assumes that most of the relevant entities will be considered ''small,'' and therefore can conclude that a substantial number of small entities will be affected.

It is possible that the proposed rule may eventually govern hydrogen production, affecting entities that fall under NAICS Code 325120, Industrial Gas Manufacturing. The definition for this code is:

> This industry comprises establishments primarily engaged in manufacturing industrial organic and inorganic gases in compressed, liquid, and solid forms.

However, it is unlikely that hydrogen will be produced on the OCS in significant amounts during the next 20-years, and MMS has no means to predict what kinds of entities would likely be involved in OCS hydrogen production, given the lack of proposals for projects that would produce hydrogen.

Impacts of This Rule on Small Businesses

We believe that most affected companies will be small businesses according to the size standard. While large power/energy companies may engage in offshore alternative energy, we do not see that company size plays a factor in the economic impact of our rulemaking.

Both large and small business will be subject to the same regulations because we do not believed it is necessary, at this time to have different sets of regulations for large and small companies.

For example, the payments for a commercial lease are rentals and operating fees. Rentals (during the preliminary and site assessment terms) are based on the size of the leased area. The operating fee is based on the potential generation capacity of a commercial project. The lease area needed will be determined by the size of the project and the operating fee is determined by capacity of the actual installed project. The project size is determined by the applicant and the rental and operating fee will not burden small business more than large because the project size determines the fee. Moreover, the greater the project's ability to produce, the greater the fee, but also the greater the potential income from the project to the developer.

One factor that could influence a company's ability to deal with these new regulations will be its experience and knowledge in working in the offshore environment. This knowledge is not size dependent as evidenced by the size of the companies that own leases and operate oil and gas facilities on the OCS. The vast majority of companies that operate oil and gas facilities on the OCS (70%) are considered to be small companies according to the size standards.

Due to the significant costs involved to develop, construct, and produce energy in the offshore environment, a project would need to generate a significant amount of electricity or energy to be economical. There are provisions in the rule for short-term leases that would allow a company to do preliminary site work and research without the same level of commitment as a commercial production lease. This is one way a small company could approach offshore development, without committing extensive resources to a project.

In addition the costs of operating in an offshore environment, are significantly higher than the costs of complying with this regulation. For example, this proposed rule would require the use of Certified Verification Agents (CVA). Although this is an additional cost to project developers, the cost of the CVA is small in comparison to the cost of designing and engineering the projects. Much of the data required for this proposed rule would need to be gathered by the project developers anyway (i.e. site surveys). The rule requires the data be provided to MMS to ensure protection of environment and endangered species.

MMS also has provisions that allow for departures from the requirements in this proposed rule. MMS can evaluate, on a case-by-case basis, if any part of this proposed regulation places an undue burden on a small business and make adjustments to the requirements, as appropriate. However, MMS cannot waive requirements to comply with other Federal laws, such as NEPA and CZMA.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call: 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more, as discussed previously under the Regulatory Planning and Review section.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule would allow greater production of energy from the OCS and would make more energy available in the US.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the U.S. or companies incorporated in the U.S. under this proposed rule. This rule would encourage competition, employment, investment, productivity, innovation, and would not have an adverse impact on the ability of U.S.-based companies to compete with foreign-based enterprises. This rule would allow production of energy (e.g., electricity) in areas where there is no production at this time. It would encourage companies to explore new avenues for generating electricity and other energy from sources other than oil and gas. The proposed rule includes a competitive process for leasing. New developments and projects would create new jobs and investment. Since this is a nascent industry in the U.S., it would also encourage the development of new technology.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. This proposed rule does not impose any (zero) Federal mandates on State, local, or tribal governments or any mandate on any part of the private sector that would involve more than $100 million a year

to operate on the OCS; therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. There are not, at present, any property rights in alternative energy facilities. Further, the rule on alternate use of existing facilities would require consent of the owner of the existing facility to any RUE MMS might issue. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, there is nothing in this proposed rule that would affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Paperwork Reduction Act (PRA)

This proposed rule contains a collection of information being submitted to the Office of Management and Budget (OMB) for review and approval under § 3507(d) of the PRA. The title of the collection of information for this rule is ''30 CFR 285—Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf'' (OMB Control Number 1010–NEW). Respondents primarily will be an estimated 15–25 Federal OCS companies that submit unsolicited proposals, lessees and designated operators, and ROW or RUE grant holders. Other potential respondents are companies or States and local governments that submit information or comments relative to alternative energy-related uses of the OCS; certified verification agents (CVAs); and surety or third-party guarantors. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory or are required to obtain or retain a benefit. The MMS will protect proprietary information according to the Freedom of Information Act, its implementing regulations, and 30 CFR 285.112 through 285.114.

As discussed earlier in the preamble, the rule establishes regulations to implement a new program to allow access for operations of alternative energy projects and alternate uses of existing facilities on the OCS. The information collection requirements are all new paperwork burdens. We estimate 31,251 total annual burden hours. Based on a cost factor of $85 per hour, we estimate the total annual hour burden cost to industry at $2,656,335 ($85 × 31,251 hours = $2,656,335).

In addition, there are three non-hour cost burdens associated with this rulemaking.

- The first concerns § 285.111 requiring respondents to pay a processing fee for MMS document or study preparation to process applications and requests. The processing fee is $4,000 and we anticipate approximately four payments.
- The second non-hour cost burden concerns § 285.111(b)(3) requiring respondents to pay for the cost of independent third-party contractors selected by MMS for all or part of any document, study, or other activity (including NEPA) and providing the results to MMS. We estimate the non-hour cost burden of this study could range from $100,000 to $2,000,000, depending on the nature of the study. For estimating purposes, we have averaged the cost range at $950,000 per submittal. We expect three submissions to be done by a contractor.
- And the last concerns § 285.417(b) requiring respondents to pay for a site-specific study to evaluate the cause of harm or damage to natural resources, and submit a report to MMS. We estimate the non-hour cost burden of this study could range from $100,000 to $2,000,000, depending on the nature of the study. For estimating purposes, we have averaged the cost range at $950,000 per submittal. We expect one submittal.

We estimate the total annual non-hour cost burden for these requirements at $3,816,000.

The following table provides a breakdown of the paperwork burden estimates for this proposed rulemaking.

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart A—General Provisions				
102; 105; 110	These sections contain general references to submitting requests, applications, plans, notices, and/or supplemental information for MMS approval—burdens covered under specific requirements.			0
102(e)	State and local governments enter into task force or joint planning or coordination agreement with MMS.	1	6 agreements	6

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
103	Request general departures not specifically covered elsewhere in part 285.	2	6 requests	12
105(c)	Make oral requests and submit written follow up within 10 business days not specifically covered elsewhere in part 285.	1	8 requests	8
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal non-procurement debarment and suspension system.	1	1 exception	1
107; 212(f); 230(f); 302(a); 408(b)(6); 409(c); 1005(c); 1007(c); 1013(b)(7).	Submit evidence of qualifications to hold a lease or grant.	2	20 evidence submissions	40
108; 530(b)	Notify MMS within 3 business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1	1 notice	1
109	Notify MMS in writing of merger, name change, or change of business form no later than 120 calendar days after earliest of either the effective date or filing date.	Exempt under 5 CFR 1320.3(h)(1).		0
111	Within 30 calendar days of receiving bill, submit processing fee payments for MMS document or study preparation to process applications and requests.	.5	4 processing fee payment submissions.	2
		4 MMS payments × $4,000 = $16,000		
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce MMS processing costs.	2	4 processing fee comments or reduction requests.	8
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to MMS to reduce MMS processing fee.	19,000	1 submission	19,000
111(b)(3)	Pay contractor for all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing costs.	3 contractor payments × $950,000 = $2,850,000		
111(b)(7); 118(a); 290.2; 436(c).	Appeal MMS estimated processing costs, decisions, or orders pursuant to 30 CFR 290.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
113(b)	Respondents submit agreement to allow MMS to disclose the data and information exempt from disclosure under the Freedom of Information Act.	4	1 agreement	4
115(c)	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
116	The Director may occasionally request information to administer and carry out the offshore alternative energy program via **Federal Register** Notices.	4	25	100
118(c); 225(b)	Within 15 calendar days of bid rejection, request reconsideration of bid decision or rejection.	Exempt under 5 CFR 1320.3(h)(9).		0
Subtotal			78 responses	19,183
			$2,866,000 non-hour costs	

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart B—Issuance of OCS Alternative Energy Leases				
200; 224; 231; 235; 236	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285			0
210; 211(a), (b), (c); 212 thru 215.	Submit comments in response to **Federal Register** notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and the Proposed Sale Notice.	4	16 comments	64
211(d); 215; 220 thru 222; 231(c)(2).	Submit bid, payments, and required information in response to **Federal Register** Final Sale Notice.	5	12 bids	60
223	Within 15 calendar days of MMS notification of tied bids, tied bidders file agreement to accept joint lease or notify MMS which bidder will become lessee.	4	1 agreement or notice	4
224	Within 10 business days, execute 3 copies of lease form and return to MMS with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution.	1	5 lease executions	5
230; 231(a)	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5	5 unsolicited requests	25
231(b)	Submit comments in response to **Federal Register** notice re interest of unsolicited request for a lease.	4	4 unsolicited requests	16
231(e), (f)	Submit decision to accept or reject terms and conditions of noncompetitive lease.	2	4 lease decisions	8
235(b); 236(b)	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1	2 requests	2
237(b)	Request lease be dated and effective 1st day of month in which signed.	1	1 request	1
Subtotal			50 responses	185
Subpart C—ROW Grants and RUE Grants for Alternative Energy Activities				
306; 309; 315; 316	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285			0
302(a); 305; 306	Submit 1 paper copy and 1 electronic version of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant.	5	1 ROW/RUE request	5
307; 308(a)(1)	Submit comments on competitive interest in response to **Federal Register** notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4	2 comments	8
308(a)(2), (b); 315; 316	Submit bid and payments in response to **Federal Register** notice of auction for a ROW or RUE grant.	5	1 bid	5
309	Submit decision to accept or reject terms and conditions of noncompetitive ROW or RUE grant.	2	1 grant decision	2
Subtotal			5 responses	20

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart D—Lease and Grant Administration				
400; 401; 402; 405; 409; 416, 433.	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285			0
401(b)	Take measures directed by MMS in cessation order and submit reports in order to resume activities.	100	1 cessation measures report.	100
405(d)	Submit written notice of change of address	Exempt under 5 CFR 1320.3(h)(1)		0
405(e)	If designated operator (DO) changes, notify MMS and identify new DO for MMS approval.	1	1 new DO notice	1
408 thru 411	Within 90 calendar days after last party executes a transfer agreement, submit 1 paper copy and 1 electronic version of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment.	1	2 assignment requests/instruments submissions.	2
415(a)(1); 416; 420(a), (b); 421(b); 428(b).	Submit request for suspension and required information no later than 90 calendar days prior to lease or grant expiration.	10	2 suspension requests	20
417(b)	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit 1 paper copy and 1 electronic version of study and results.	100	1 study/submission	100
		1 study × $950,000 = $950,000		
425 thru 428; 652(a)	Request lease or grant renewal no later than 180 calendar days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease.	6	2 renewal requests	12
435; 658(c)(2)	Submit 1 paper copy and 1 electronic version of application to relinquish lease or grant.	1	2 relinquish applications	2
436; 437	Provide information for reconsideration of MMS decision to contract or cancel lease or grant area.	Exempt under 5 CFR 1320.3(h)(9).		0
Subtotal			11 responses	237
			$950,000	
Subpart E—Payments and Financial Assurance Requirements				
An * indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 285 to furnish, replace, or provide additional bonds, securities, or financial assurance. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
500 thru 508; 1011	Submit payor information, payments and payment information, and maintain auditable records according to subchapter A regulations or guidance.	Burdens covered by information collections approved for 30 CFR Subchapter A.		0
509	Submit application and required information for waiver or reduction of rental or other payment.	1	1 waiver or rental reduction.	1
*515; 516(a)(1), (b); 525(a) thru (f).	Execute and provide $100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1	6 base-level lease bonds or other security.	6
*516(a)(2), (3), (b); 517; 525(a) thru (f).	Execute and provide SAP and COP commercial lease bonds in amounts determined by MMS.	1	5 SAP and COP bonds	5

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
517(d)(1)	Submit comments on proposed adjustment to bond amounts.	1	3 adjustment comments	3
517(d)(2)	Request bond reduction and submit evidence to justify.	5	2 reduction requests	10
*520; 521; 525(a) thru (f)	Execute and provide $300,000 minimum limited lease or grant-specific bond or increase financial assurance if required.	1	1 base-level ROW/RUE bond.	1
525(g)	Surety notice to lessee or ROW/RUE grant holder and MMS within 5 business days after initiating insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1	1 surety notice	1
*526	In lieu of surety bond, pledge other types of securities, including authority for MMS to sell and use proceeds.	2	1 other security pledge	2
*527	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2	1 decommissioning account.	2
530(a)	Notify MMS promptly of lapse in bond or other security.	1	1 notice	1
532(b)	Surety requests MMS terminate period of liability and notifies lessee or ROW/RUE grant holder.	1	1 request	1
533(a)(2)(ii), (iii)	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3	1 surety agreement	3
536(b)	Within 10 business days following MMS notice, lessee, grant holder, or surety agree to and demonstrate to MMS that lease will be brought into compliance.	16	1 agreement demonstration.	16
Subtotal			25 responses	52
Subpart F—Plans and Information Requirements				
Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
**600(a); 601(a), (b), (c); 605 thru 613.	Within 6 months after issuance of a competitive lease or grant, or within 60 calendar days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a SAP, including air quality and all required information, certifications, etc.	240	6 SAPs	1,440
**600(b); 601(c), (d)(1); 618; 620 thru 629; 633.	If requesting an operations term for commercial lease, at least 6 months before the end of site assessment term, submit 1 paper copy and 1 electronic version of a COP, including air quality and all required information, surveys and reports, certifications, project easements, etc.	1,000	3 COPs	3,000
**600(c); 601(a), (b); 640 thru 647.	Within 6 months after issuance of a competitive lease or grant, or within 60 calendar days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a GAP, including air quality and all required information, surveys and reports, certifications, project easements, etc.	240	1 GAP	240

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
602 [1]	Until MMS releases financial assurance, respondents must maintain, and provide to MMS if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2	9 records maintenance/ submissions.	18
** 612(e), (f); 617	Submit revised or modified SAPs and required additional information.	50	1 revised or modified SAP.	50
614	Before beginning construction of OCS facility described in SAP, complete survey activities identified in SAP and submit initial findings. This only includes the time involved in submitting the findings, it does not include the survey time as these surveys would be conducted as good business practice.	30	6 surveys/reports	180
615(a)	Notify MMS in writing within 30 calendar days of completion of construction and installation activities under SAP.	1	5 completion construction notices.	5
615(b)	Submit annual report summarizing findings from site assessment activities.	30	8 annual reports	240
615(c)	Submit annual, or at other time periods as MMS determines, SAP compliance certification and reports.	40	8 compliance certifications.	320
617(a)	Notify MMS in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10	1 notice before activity	10
** 601(d)(2), 628(f); 632(b); 634.	Submit revised or modified COPs, including project easements, and all required additional information.	50	1 revised or modified COP.	50
627(c)	Include oil spill response plan as required by part 254.	Burden covered under 1010–0091, 30 CFR 254.		0
631	Request deviation from approved COP schedule	2	1 deviation request	2
633(b)	Submit annual, or at other time periods as MMS determines, COP compliance certification and reports.	80	9 compliance certifications.	720
634(a)	Notify MMS in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10	1 notice before activity	10
635	Notify MMS any time commercial operations cease without an approved suspension.	1	1 termination notice	1
636(a)	Notify MMS in writing no later than 30 calendar days after commencing activities associated with placement of facilities on lease area.	1	3 commence notices	3
636(b)	Notify MMS in writing no later than 30 calendar days after completion of construction and installation activities.	1	3 completion notices	3
636(c)	Notify MMS in writing at least 7 calendar days before commencing commercial operations.	1	3 initial ops notices	3
** 647(f); 655; 658(c)(3)	Submit revised or modified GAPs and required additional information.	50	1 revised or modified GAP.	50

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. This only includes the time involved in submitting the findings; it does not include the survey time as these surveys would be conducted as good business practice.	30	5 surveys/reports	150
653(a)	Notify MMS in writing within 30 calendar days of completion of construction and installation activities under the GAP.	1	5 construction completion notices.	5
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	8 annual reports	240
653(c)	Submit annual, or at other time periods as MMS determines, GAP compliance certification and reports.	40	8 compliance certifications.	320
655(a)	Notify MMS in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10	1 notice before activity	10
656	Notify MMS if at any time approved GAP activities cease without an approved suspension.	1	1 termination notice	1
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation and provide MMS evidence of such notices.	3	1 deviation notice/MMS evidence.	3
Subtotal			100 responses	7,074
Subpart G—Facility Design, Fabrication, and Installation				
Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
*** 700(a)(1), (b), (c); 701	Submit Facility Design Report, including 1 paper copy and 1 electronic copy of the cover letter, and all required information (1–3 paper or electronic copies as specified).	200	3 Facility Design Reports	600
*** 700(a)(2); (b), (c); 702	Submit 1 paper copy and 1 electronic copy of a Fabrication and Installation Report and all required information.	160	3 Fabrication & Installation Reports.	480
705(b); 707; 712	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA design interim reports.	300
		100	3 CVA final reports	300
705(b); 708; 709; 710; 712	CVA conducts independent assessments on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA interim reports	300
		100	3 CVA final reports	300

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
705(b); 711; 712	CVA monitors major project modifications and repairs and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	20	1 CVA interim report	20
		15	1 CVA final report	15
706	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16	13 new CVA nominations	208
708(b)(2)	Lessee or grant holder notify MMS if modifications identified by CVA are accepted.	1	1 notice	1
709(a)(14); 710(a)(2), (e) [1]	Make fabrication quality control, installation towing, and other records available to CVA for review (retention required by § 285.714).	1	3 records retention	3
713(a)	Notify MMS within 10 business days after commencing commercial operations.	1	2 commence notices	2
714 [1]	Until MMS releases financial assurance, compile, retain, and make available to MMS and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100	3 lessees	300
Subtotal			42 responses	2,829
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments				
801	Submit information with plans to ensure proposed activities will be conducted in compliance with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA); including, agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of species or habitat.	6	2 ESA/MMPA submissions.	12
801(d), (e)	Notify MMS if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1	2 notices	2
802(a), (b)	If applicable, consult with MMS and conduct survey and submit an archaeological report with applications or plans.	10	1 archaeological report	10
802(c); 803(b)	If requested, conduct further archaeological investigations and submit report.	10	1 archaeological report	10
803(a)(2); 902(e)	Notify MMS of archaeological resource within 72 hours of discovery.	3	1 archaeological notice	3
803(d)	If applicable, submit payment for MMS costs in carrying out National Historic Preservation Act responsibilities.	.5	1 payment	.5
804(b), (c)	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15	2 survey/report	30

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
807	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70	10 air quality modeling reports/info.	700
810	Submit safety management system description with the SAP, COP, or GAP.	35	10 safety management systems.	350
813(b)(1)	Report within 24 hours when any required safety equipment taken out of service for more than 12 hours; provide written confirmation if oral report.	.5	3 safety equipment reports.	1.5
813(b)(2)	Submit written confirmation when equipment removed from service for greater than 60 calendar days.	1	1 written confirmation	1
813(b)(3)	Notify MMS when equipment returned to service; provide written confirmation if oral notice.	.5	3 return to service notices.	1.5
815(b)	Notify MMS (oral or written) as soon as practicable of the repair of any P/L, cable, equipment, or facility associated with lease or grant.	.5	3 repair notices	1.5
815(c)	When required, analyze cable, P/L, or facility failures to determine cause and as soon as available submit comprehensive written report.	1.5	1 failure analysis report	1.5
816	Submit plan of corrective action report on observed detrimental affects on cable, P/L, or facility within 30 calendar days of discovery; take remedial action and submit report of remedial action within 30 calendar days after completion.	2	1 corrective action plan and report.	2
822(a)(2)(iii), (b); 824(a) [1]	Until MMS releases financial assurance, maintain records of design, construction, operation, maintenance, repairs, investigation on or related to lease or ROW/RUE area, and make available to MMS for inspection.	1	4 records retention	4
823	Request reimbursement within 90 calendar days for food, quarters, and transportation provided to MMS reps during inspection.	2	1 reimbursement request	2
824(a)	Develop annual self inspection plan covering all facilities; retain with records, and make available to MMS upon request.	24	4 self assessment plans	96
824(b)	Conduct annual self inspection and submit report by November 1.	36	4 annual reports	144
825	Based on API RP 2A–WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to MMS upon request.	60	4 assessments and mitigation actions.	240
830(a), (b), (c); 831 thru 833	Immediately report incidents to MMS via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information.	Oral .5	6 incidents	3
		Written 4	1 incident	4
830(d)	Report oil spills as required by part 254	Burden covered by 1010–0091, 30 CFR 254.		0
Subtotal			66 responses	[2] 1,620

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subpart I—Decommissioning				
902(b), (c), (d); 905, 906; 907; 908(c); 909.	Submit for approval 1 paper copy and 1 electronic copy of the decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 calendar days after completion of activities, or 90 calendar days after cancellation, relinquishment, or other termination of lease or grant. Include requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information requested or modify and resubmit application.	20	1 decommissioning application.	20
902(d); 908	Notify MMS at least 60 calendar days before commencing decommissioning activities.	1	1 decommissioning notice.	1
910	Within 60 calendar days after removing a facility, verify to MMS that site is cleared.	1	1 removal verification	1
912	Within 60 calendar days after removing a facility, cable, or pipeline, submit a written report.	8	1 removal report	8
We don't anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden.				
Subtotal			4 responses	30
Subpart J—RUEs for Energy and Marine-Related Activities Using Existing OCS Facilities				
1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to MMS for an alternative use RUE, including all required information/modifications.	1	1 request for RUE to use existing facility.	1
1007(a), (b), (c)	Submit indication of competitive interest in response to **Federal Register** notice.	4	1 response	4
1007(c), (d), (e)	Submit description of proposed activities and required information in response to **Federal Register** notice of competitive offering.	5	1 submission	5
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by MMS.	1	1 decision	1
1010(c)	Request renewal of Alternate Use RUE	6	1 renewal request	6
1012; 1016(b)	Provide financial assurance as MMS determines in approving RUE for an existing facility, including additional security if required.	1	1 bond or other security	1
1013	Submit request for assignment of an alternative use RUE for an existing facility, including all required information.	1	1 RUE assignment request.	1
1015	Request relinquishment of RUE for an existing facility.	1	1 RUE relinquish	1
Subtotal			8 responses	20
30 CFR Parts 250 & 290 Proposed Revisions				
250.1730(c)	Request departure from requirement to remove a platform or other facility.	No change to burden covered by 1010–0142, 30 CFR 250, subpart Q.		0
250.1731(c)	Request deferral of facility removal subject to RUE issued under this subpart.	1	1 deferral request	1
250.290.2	Request reconsideration of an MMS decision concerning a lease bid.	Exempt under 5 CFR 1320.3(h)(9).		0

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour costs	
Subtotal			1 response	1
Total Hour Burden			390 Responses	31,251
Total Non-Hour Burden Costs			$3,816,000 Non-Hour Costs	

[1] Retention of these records is usual and customary business practice; the burden is primarily to make them available to MMS and CVAs.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. You should provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule preamble. Refer to the **ADDRESSEES** section for instructions on submitting comments. You may obtain a copy of the supporting statement for this new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves this collection of information and assigns an OMB control number and the regulations become effective, you are not required to respond. The OMB is required to make a decision concerning the collection of information of this proposed regulation between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 8, 2008. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

a. The MMS specifically solicits comments on the following questions:

(1) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

b. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. Other than the non-hour cost burdens previously identified and discussed, we have not identified any other non-hour burden costs, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and start-up cost component, and (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. 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. 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.

National Environmental Policy Act (NEPA) of 1969

The Minerals Management Service (MMS) has prepared a Draft EA analyzing the proposed regulations for the MMS Alternative Energy and Alternate Use program. The Draft EA incorporates by reference the Programmatic Environmental Impact Statement (EIS) *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.* This Draft EA was prepared to assess any impacts as a result of this rule. The Draft EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm.*

To obtain single copies of the Programmatic EIS published on November 7, 2007, you may contact Mr. James F. Bennett, Minerals Management Service, MS 4042, 381 Elden Street, Herndon, VA 20170. You may also *view the Programmatic EIS* on the MMS Web site at: *ocsenergy.anl.gov.*

Effects on the Energy Supply (E.O. 13211)

While this proposed rule is a significant regulatory action under Executive Order 12866, the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. In fact, this proposed rule is expected to have a positive effect on the production, supply, and distribution of energy because the proposed rule would establish a framework for allowing the development and production of new energy sources on the OCS. Furthermore, the Administrator of the Office of Information and Regulatory Affairs, OMB, has not designated this proposed rule a significant energy action. Therefore, this proposed rule is not a significant energy action and does not require a Statement of Energy Effects. E.O. 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. According to E.O. 13211, a significant energy action means any action by an agency that promulgates or is expected to lead to promulgation of a final rule or regulations that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized,

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 285

Bonding, Coastal zone, Continental shelf, Electric power, Energy, Environmental impact statements, Environmental protection, Incorporation by Reference, Marine resources, Natural resources, Payments, Public lands, Public lands—rights-of-way, Reporting and recordkeeping requirements, Revenue sharing, Solar energy.

30 CFR Part 290

Administrative practice and procedure.

Dated: March 19, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

Editorial Note: This document was received at the Office of the Federal Register on June 24, 2008.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR chapter II as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

2. Amend 250.1703 by revising paragraph (c) to read as follows:

§ 250.1703 What are the general requirements for decommissioning?

* * * * *

(c) Remove all platforms and other facilities, except as provided in sections 1725(a) and 1730.

* * * * *

3. Amend 250.1725(a) by adding a third and fourth sentence and new paragraphs (a)(1) and (2) to read as follows:

§ 250.1725 When do I have to remove platforms and other facilities?

(a) * * * Other activities include those supporting OCS oil and gas production and transportation, as well as other energy-related or marine-related uses (including LNG) for which adequate financial assurance for decommissioning has been provided to a Federal agency which has given MMS a commitment that it has and will exercise authority to compel the performance of decommissioning within a time following cessation of the new use acceptable to MMS. The approval will specify:

(1) Whether you must continue to maintain any financial assurance for decommissioning; and

(2) Whether, and under what circumstances, you must perform any decommissioning not performed by the new facility owner/user.

* * * * *

§ 250.1730 [Amended]

4. In § 250.1730, amend the introductory text by removing ''or other use''.

5. Add § 250.1731, to read as follows:

§ 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

(a) The holder of an Alternate Use RUE issued under part 285 of this subchapter is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE. See part 285, subpart I of this subchapter for additional information concerning the decommissioning responsibilities of an Alternate Use RUE grant holder.

(b) The lessee under the lease originally issued under 30 CFR part 256 will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under this part.

(c) If a lease issued under 30 CFR part 256 is cancelled or otherwise terminated under any provision of this subchapter, the lessee, upon our approval, may defer removal of any OCS facility within the lease area that is subject to an Alternate Use RUE. If we elect to grant such a deferral, the lessee remains responsible for removing the facility upon termination of the Alternate Use RUE and will be required to retain sufficient bonding or other financial assurances to ensure that the structure is removed or otherwise decommissioned in accordance with the provisions of this subpart.

6. Add 30 CFR part 285 to read as follows:

PART 285—ALTERNATIVE ENERGY AND ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

Subpart A—General Provisions

Sec.

Subpart B—Issuance of OCS Alternative Energy Leases

General Lease Information

Authority: 43 U.S.C. 1331 *et seq.*, 43 U.S.C. 1337.

Subpart A—General Provisions

§ 285.100 Authority.

The authority for this part derives from amendments to Section 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as set forth in Subsection 388(a) of the Energy Policy Act of 2005 (Pub. L. 109–58).

§ 285.101 What is the purpose of this part?

The purpose of this part is to:

(a) Establish procedures for issuance and administration of leases, right-of-way (ROW) grants, and right-of-use and easement (RUE) grants for alternative energy production on the Outer Continental Shelf (OCS) and RUEs for the alternate use of OCS facilities for energy or marine-related purposes;

(b) Inform you and third parties of your obligations when you undertake activities authorized in this part; and

(c) Ensure that alternative energy activities on the OCS and activities involving the alternate use of OCS facilities for energy or marine-related purposes are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of your lease, ROW grant, RUE grant, or Alternate Use RUE grant.

(d) This part is not intended to convey access rights for oil, gas, or other minerals.

§ 285.102 What are MMS's responsibilities under this part?

(a) The MMS will ensure that any activities authorized in this part are carried out in a manner that provides for:

(1) Safety;

(2) Protection of the environment;

(3) Prevention of waste;

(4) Conservation of the natural resources of the OCS;

(5) Coordination with relevant Federal agencies;

(6) Protection of national security interests of the United States;

(7) Protection of the rights of other authorized users of the OCS;

(8) A fair return to the United States;

(9) Prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas;

(10) Consideration of the location of and any schedule relating to a lease or grant under this part for an area of the OCS, and any other use of the sea or seabed;

(11) Public notice and comment on any proposal submitted for a lease or grant under this part; and

(12) Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.

(b) The MMS will require compliance with all applicable laws, regulations,

other requirements, the terms of your lease or grant under this part and approved plans. The MMS will approve, disapprove, or approve with conditions any plans, applications, or other documents submitted to MMS for approval under the provisions of this part.

(c) Unless otherwise provided in this part, MMS may give oral directives or decisions whenever prior MMS approval is required under this part. The MMS will document in writing any such oral directives within 10 business days.

(d) The MMS will establish practices and procedures to govern the collection of all payments due to the Federal Government, including any cost recovery fees, rentals, operating fees, and other fees or payments. The MMS will do this in accordance with the terms of this part, the leasing notice, the lease or grant under this part and applicable Minerals Revenue Management regulations or guidance.

(e) The MMS will provide for coordination and consultation with the Governor of any State or the executive of any local government that may be affected by a lease, easement, or right-of-way under this subsection. The MMS may invite any affected State Governor and affected local government executive to join in establishing a task force or other joint planning or coordination agreement in carrying out our responsibilities under this part.

§ 285.103 When may MMS prescribe or approve departures from the regulations governing operations?

(a) The MMS may prescribe or approve departures from the operating requirements of this part when departures are necessary to:

(1) Facilitate the appropriate activities on a lease or grant under this part;

(2) Conserve natural resources;

(3) Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or

(4) Protect sites, structures, or objects of historical or archaeological significance.

(b) Any departure approved under this section and its rationale must:

(1) Be consistent with subsection 8(p) of the OCS Lands Act;

(2) Protect the environment and the public health and safety to the same degree as if there was no approved departure from the regulations;

(3) Not impair the rights of third parties; and

(4) Be documented in writing.

§ 285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from an alternative energy resource on the OCS?

Except as otherwise authorized by law, it shall be unlawful for any person to construct, operate, or maintain any facility to produce, transport or support generation of electricity or other energy product derived from alternative energy resource on any part of the Outer Continental Shelf except under and in accordance with the terms of a lease, easement or right-of-way issued pursuant to the OCS Lands Act.

§ 285.105 What are my responsibilities under this part?

As a lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant, you must:

(a) Design your projects and conduct all activities in a manner that ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable;

(b) Submit requests, applications, plans, notices, modifications, and supplemental information to MMS, as required by this part;

(c) Follow up, in writing, any oral request or notification you made, within 3 business days;

(d) Comply with the terms, conditions, and provisions of all reports and notices submitted to MMS and all plans, revisions, and other MMS approvals, as provided in this part;

(e) Make all applicable payments on time;

(f) Comply with the Department of the Interior's non-procurement debarment regulations at 2 CFR part 1400;

(g) Include the requirement to comply with 2 CFR part 1400 in all contracts and transactions related to a lease or grant under this part;

(h) Conduct all activities authorized by the lease or grant in a manner consistent with the provisions of subsection 8(p) of the OCS Lands Act;

(i) Compile, retain, and make available to MMS representatives, within the time specified by MMS, any data and information related to the site assessment, design, and operations of your project; and

(j) Respond to requests from the Director in a timely manner.

§ 285.106 Who can hold a lease or grant under this part?

(a) A lease or grant issued under this part may be held only by:

(1) Citizens and nationals of the United States;

(2) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) Private, public, or municipal corporations organized under the laws of any State of the U.S., the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction; or

(4) Associations of such citizens, nationals, resident aliens, or corporations;

(5) States of the U.S.; or

(6) Political subdivisions of States of the U.S.

(b) You may not become a lessee, ROW grant holder, RUE grant holder, Alternate Use RUE grant holder or acquire an interest in a lease or grant under this part if:

(1) You or your principals are excluded or disqualified from participating in transactions covered by the Federal non-procurement debarment and suspension system (2 CFR part 1400), unless MMS explicitly has approved an exception for this transaction;

(2) The MMS determines or has previously determined after notice and opportunity for a hearing that you or your principals have failed to meet or exercise due diligence under any OCS lease or grant;

(3) The MMS determines or has previously determined after notice and opportunity for a hearing that you:

(i) Remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30 calendar days (or such other period MMS allowed for compliance) after MMS directed you to comply; and

(ii) You took no action to correct the noncompliance within that time period; or

(4) After notice and hearing, MMS finds that you are not meeting the diligence requirements on any other OCS lease issued under this subchapter.

§ 285.107 How do I show that I am qualified to be a lessee or grant holder?

(a) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It need not be notarized nor give the age of individual. A resident alien may submit a photocopy of the Immigration and Naturalization Service form evidencing legal status of the resident alien.

(b) A corporation or association must submit evidence, as specified in the table in paragraph (c) of this section, acceptable to MMS that:

(1) It is qualified to hold leases or grants under this part,

(2) It is authorized to conduct business under the laws of its State;

(3) It is authorized to hold leases or grants on the OCS under the operating rules of its business; and

(4) The persons holding the titles listed are authorized to bind the corporation or association when conducting business with us.

(c) Acceptable evidence under paragraph (b) of this section includes, but is not limited to:

Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. Prtnsp.	Gen. Prtnsp.	LLC	Trust
(1) Original certificate or certified copy from the State of incorporation stating the name of the corporation exactly as it must appear on all legal documents	XX				
(2) Certified statement by Secretary/ Assistant Secretary, over corporate seal, certifying that the corporation is authorized to hold OCS leases	XX				
(3) Evidence of authority of titled positions to bind corporation, certified by Secretary/Assistant Secretary, over corporate seal, including the following:	XX				
(i) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation.					
(ii) Certified copy of resolutions granting corporate officer authority to issue a power of attorney.					
(iii) Certified copy of power of attorney or certified copy of resolution granting power of attorney.					
(4) Original certificate or certified copy of partnership or organization paperwork registering with the appropriate State official	.....	XX	XX	XX	
(5) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary/Assistant Secretary of partnership or member or manager of LLC	.....	XX	XX	XX	
(6) Original certificate or certified copy evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary/ Assistant Secretary OR original paperwork registering with the appropriate State official	.....	XX	XX	XX	
(7) Statements from each partner or LLC member indicating the following:	.....	XX	XX	XX	
(i) If a corporation or partnership, statement of State of organization and authorization to hold OCS leases, certified by Secretary/Assistant Secretary over corporate seal, if a corporation.					
(ii) If an individual, a statement of citizenship.					
(8) Statement from general partner, certified by Secretary/Assistant Secretary that:	.....	XX			
(i) Each individual limited partner is a U.S. citizen and;					
(ii) Each corporate limited partner or other entity is incorporated or formed and organized under the laws of a U.S. State or territory.					
(9) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, i.e., certificates of authority from Secretary/Assistant Secretary reflecting authority of officers	.....	XX	XX	XX	
(10) Listing of members of LLC certified by Secretary/Assistant Secretary or any member or manager of LLC	.....	.....	.....	XX	
(11) Copy of trust agreement or document establishing the trust and all amendments, properly certified by the trustee with reference to where the original documents are filed	.....	.....	.....	.....	XX
(12) Statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases or grants	.....	.....	.....	.....	XX

§ 285.108 When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt?

You must notify MMS within 3 business days after you learn of any action filed alleging that you are insolvent or bankrupt.

§ 285.109 When must I notify MMS of mergers, name changes, or changes of business form?

You must notify MMS in writing of any merger, name change, or change of business form. You must notify MMS as soon as practicable following the merger, name change or change in business form, but no later than 120 calendar days after the earliest of either the effective date, or the date of filing the change or action with the Secretary of the State or other authorized official in the State of original registry.

§ 285.110 Where do I submit plans, applications, reports or notices required by this part?

You must submit all plans, applications, reports or notices required by this part to MMS at the following address: Associate Director OMM, Minerals Management Service, MS 4000, 381 Elden Street, Herndon, VA 20170.

§ 285.111 When and how does MMS charge me processing fees on a case-by-case basis?

(a) MMS will charge a processing fee on a case-by-case basis under the procedures in this section with regard to any application or request under this part if we decide at any time that the preparation of a particular document or study is necessary for the application or request and it will have a unique processing cost, such as the preparation of an Environmental Impact Statement.

(b) We will measure the ongoing processing cost for each individual application or request according to the following procedures:

(1) Before we process your application or request, we will give you a written estimate of the proposed fee for reasonable processing costs.

(2) You may comment on the proposed fee.

(3) You may ask for our approval to perform, or to directly pay a contractor for, all or part of any document, study or other activity according to standards we specify, thereby reducing our costs for processing your application or request.

(4) We will then give you the final estimate of the processing fee amount

after considering your comments and any MMS-approved work you will do.

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedure in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section, but we will not stop ongoing processing unless you do not pay in accordance with paragraph (b)(5) of this section.

(ii) Once processing is complete, we will refund to you the amount of money that we did not spend on processing costs.

(5)(i) We will periodically estimate what our reasonable processing costs will be for a specific period and will bill you for that period. Payment is due to us 30 calendar days after you receive your bill. We will stop processing your document if you do not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than our reasonable processing costs for the period, we will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without our prior written approval.

(6) You must pay the entire fee before we will issue the final document or take final action on your application or request.

(7) You may appeal our estimated processing costs in accordance with the regulations in 43 CFR part 4, subpart J. We will not process the document further until the appeal is resolved, unless you pay the fee under protest while the appeal is pending.

If the appeal results in a decision changing the proposed fee, we will adjust the fee in accordance with paragraph (b)(5)(ii) of this section. If we adjust the fee downward, we will not pay interest.

§ 285.112 Definitions.

Terms used in this part have the meanings as defined in this section:

Affected local government means with respect to any activities proposed, conducted, or approved under this part, any locality—

(1) That is, or is proposed to be the site of, gathering, transmitting, or distributing electricity or other energy product or is otherwise receiving, processing, refining, or transshipping product, or services derived from activities approved under this part; or

(2) That is used, or is proposed to be used, as a support base for activities approved under this part; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part.

Affected State means with respect to any activities proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be the site of gathering, transmitting, or distributing energy or is otherwise receiving, processing, refining, or transshipping products, or services derived from activities approved under this part; or

(2) That is used, or is scheduled to be used, as a support base for activities approved under this part; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part.

Alternative Energy means energy resources other than oil and gas and minerals as defined in 30 CFR part 280. Such resources include, but are not limited to, wind, solar, and ocean waves, tides and current.

Alternate Use refers to the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law.

Alternate Use RUE means a right-of-use and easement issued for activities authorized under subpart J of this part.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (i.e., which are capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation).

Best available and safest technology (BAST) means the best available and safest technologies that MMS determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best management practices means practices recognized within their respective industry, or by government, as one of the best for achieving the desired output while reducing undesirable outcomes.

Certified Verification Agent (CVA) means an individual or organization, experienced in the design, fabrication, and installation of offshore marine facilities or structures, who will conduct specified third-party reviews, inspections and verifications in accordance with this part.

Coastline means the same as the term ''coast line'' in section 2 of the Submerged Lands Act (43 U.S.C. 1301(c)).

Commercial activities means all activities associated with the generation, storage, or transmission of electricity or other energy product from an alternative energy project on the OCS, and for which such electricity or other energy product is intended for distribution, sale or other commercial use. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning.

Commercial lease means a lease issued under this part that specifies the terms and conditions under which a person can conduct commercial activities.

Commercial operations means the generation of electricity or other energy product for commercial use, sale, or distribution.

Decommissioning means removing MMS-approved facilities and returning the site of the lease or grant to a condition that meets the requirements under subpart I.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Distance means the minimum great circle distance.

Eligible State means a coastal State meeting either or both of the following criteria: Having submerged lands within 3 miles of any portion of a qualified project area or having a coastline no more than 15 miles from the geographic center of a qualified project.

Facility means an installation that is permanently or temporarily attached to the seabed of the OCS. Facilities include any structures; devices; appurtenances; gathering, transmission, and distribution cables; pipelines; and permanently moored vessels. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with one or more satellite or secondary installations is a single facility. The MMS may decide that the complexity of the installations justifies their classification as separate facilities.

Geographic center of a project means the centroid (geometric center point) of a qualified project area that is used to determine State eligibility and the distribution of revenues among States. The centroid represents the point that is the weighted average of coordinates of the same dimension within the mapping system, with the weights determined by the density function of the system. For example, in the case of a project area

shaped as a rectangle or other parallelogram, the geographic center would be that point where lines between opposing corners intersected. The geographic center of a project could be outside the project area itself if that area is irregularly shaped.

Governor means the Governor of a State or the person or entity lawfully designated by or under State law to exercise the powers granted to a Governor.

Grant means a right-of-way, right-of-use and easement, or alternate use right-of-use and easement issued under the provisions of this part.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Income, unless clearly specified to the contrary, refers to the money received by the project owner or holder of the lease or grant issued under this part. As such, use of the term does not require that project receipts exceed project expenses.

Lease means an authorization to use a designated portion of the OCS for activities authorized under this part. The term also means the area covered by that authorization, when the context requires.

Lessee means the holder of a lease and, depending upon the context, all persons authorized by the holder of a lease, to conduct activities authorized in this part.

Limited lease means a lease issued under this part that specifies the terms and conditions under which a person may conduct activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Miles, for the purpose of distributing revenues from alternate energy and alternate use projects, under this part, means nautical miles, as opposed to statute miles.

MMS means the Minerals Management Service of the Department of the Interior.

Natural resources includes, without limiting the generality thereof, alternative energy, oil, gas, and all other minerals (as ''minerals'' is defined in Section 2(q) of the OCS Lands Act), and marine animal and marine plant life.

Operator means the individual, corporation, or association having control or management of activities on the lease or grant under this part. The operator may be a lessee, grant holder, or a contractor designated by the lessee or holder of a grant under this part.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means, in addition to a natural person, an association (including partnerships and joint ventures), a State, a political subdivision of a State, a Native American Tribal Government or a private, public, or municipal corporation.

Project, for the purposes of revenue sharing under this part, means the activities conducted on the OCS that are authorized and/or regulated under this part. The term project can also be used to refer to the facilities used to conduct those activities or to the project area.

Project area means the geographic surface area necessary, or granted, for the purpose of a specific project: A lease block, a group of lease blocks, or equivalent acreage that the Federal Government determines to be a source of the generation of income subject to revenue payments under this part. If OCS acreage is granted for a project under some form of agreement other than a lease (i.e., a ROW, RUE or Alternate Use RUE issued under this part), the Federal acreage granted generally would be considered the project area. To avoid having projects distant from shore being designated a qualified project, and to mitigate distortions in the calculation of the geometric center of the project area, project easements issued under this part are not considered part of the qualified project's area, though any fees paid for such acreage would constitute part of the revenues from the qualified project.

Project easement means an easement to which, upon approval of your Construction and Operations Plan or General Activities Plan, you are entitled as part of the lease for the purpose of installing gathering, transmission and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease.

Qualified project is a project as defined above whose area is located wholly or partially within the area extending 3 miles seaward of State submerged lands, determined by the seaward boundary of any coastal State as established under 43 U.S.C. 1312.

Qualified project area is the MMS-determined project area for a qualified project.

Revenues means bonuses, rents, operating fees, and similar payments made in connection with a project or project area. It does not include administrative fees such as those assessed for cost recovery.

Right-of-use and easement (RUE) grant means an easement issued by MMS under this part that authorizes use of a designated portion of the OCS to support activities on an alternative energy lease or other approval issued by a State or private party. The term also means the area covered by the authorization.

Right-of-way (ROW) grant means an authorization issued by MMS under this part that allows for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing or otherwise transporting electricity or other energy product generated or produced from alternative energy, but does not constitute a project easement under this part. The term also means the area covered by the authorization.

Secretary means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

Significant archaeological resource means an archaeological resource that meets the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Site assessment activities means those initial activities conducted to characterize a site on the OCS, including physical characterization studies (e.g., geological and geophysical surveys, hazard and archaeological surveys), resource assessment surveys (e.g., meteorological and oceanographic), and baseline collection studies (e.g., biological, economic).

You and *your* mean an applicant, lessee, the operator, a designated agent of the lessee(s) or designated operator, ROW grant holder, RUE grant holder, or Alternate Use RUE grant holder under this part, or the possessive of each, as applicable.

We, us and *our* mean the Minerals Management Service of the Department of the Interior, or its possessive, as applicable.

§ 285.113 How will data and information obtained by MMS under this part be disclosed to the public?

(a) The MMS will make data and information available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552), the regulations contained in 43 CFR part 2 (Records and Testimony), and the requirements of the Act.

(b) If MMS determines that any data or information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)), MMS will not disclose the data and information unless the submitter agrees to the disclosure except to the extent required by law.

§ 285.114 Paperwork Reduction Act statements—information collection.

(a) Office of Management and Budget (OMB) has approved the information collection requirements in 30 CFR part 285 under 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 1010–XXXX. The table in paragraph (e) of this section lists the subpart in the rule requiring the information, its title, summarizes the reasons for collecting the information, and how MMS uses the information.

(b) Respondents are primarily alternative energy applicants, lessees, ROW grant holders, RUE grant holders, Alternate Use RUE grant holders, and operators. The requirement to respond to the information collection in this part is mandated under subsection 8(p) of the OCS Lands Act. Some responses are also required to obtain or retain a benefit or may be voluntary.

(c) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires us to inform the public 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.

(d) Send comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 5438, 1849 C Street, NW., Washington, DC 20240.

(e) The MMS is collecting this information for the reasons given in the following table:

30 CFR 285 subpart/title	Reasons for collecting information and how used
(1) Subpart A—General Provisions	To inform MMS of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent development on OCS leases.
(2) Subpart B—Issuance of OCS Alternative Energy Leases.	To provide MMS with information needed to determine when to use a competitive process for issuing an alternative energy lease and to identify auction formats and bidding systems and variables that we may use when that determination is affirmative; to determine the terms under which we will issue alternative energy leases.
(3) Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative Energy Activities.	To issue ROW grants and RUE grants for OCS alternative energy activities that are not associated with an MMS-issued alternative energy lease.
(4) Subpart D—Lease and Grant Administration	To ensure compliance with regulations pertaining to a lease or grant, assignment and designation of operator, and suspension, renewal, termination, relinquishment, and cancellation of leases and grants.
(5) Subpart E—Payments and Financial Assurance Requirements.	To provide a payment structure for alternative energy leases that complies with subsection 8(p)(2) of the OCS Lands Act, to ensure a fair return to the government for use of the OCS. To ensure that lessee and grant holders provide the required financial assurance on their lease or grant.
(6) Subpart F—Plans and Information Requirements.	The lessee, grant holder, or operator must submit the appropriate plan to MMS for review and approval, before beginning any activities covered by that plan. MMS needs the information for compliance with NEPA, CZMA, and other Federal laws and to ensure the safety of the environment on the OCS.
(7) Subpart G—Facility Design, Fabrication, and Installation.	MMS would require lessees, operators, and grant holders to submit reports that address the final design, fabrication, and installation of facilities on a lease or grant to ensure that these facilities are designed, fabricated, and installed according to appropriate standards, in compliance with MMS regulations, and according to the approved plan.
(8) Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments.	To ensure that lease and grant operations are conducted in a manor that is safe and protects the environment. To ensure compliance with other Federal laws, these regulations, the lease or grant, and approved plans.
(9) Subpart I—Decommissioning	To determine that decommissioning activities comply with regulatory requirements and approvals. To ensure that site clearance and platform or pipeline removal are properly performed to protect marine life and the environment and do not conflict with other users of the OCS.
(10) Subpart J—Rights of Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities.	To provide MMS with information regarding the design, installation, and operation of RUEs on the OCS. To ensure that RUE operations are safe and protect the human, marine, and coastal environment. To ensure compliance with other Federal laws, these regulations, the RUE grant, and approved plans.

§ 285.115 Documents incorporated by reference.

(a) The MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The MMS will publish any changes to the incorporation by reference of these documents in the **Federal Register**.

(2) The MMS may make a rule amending the incorporation by reference of the document effective without prior opportunity for public comment when MMS:

(i) Determines that the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties; and

(ii) Meets the requirements for making a rule immediately effective under 5 U.S.C. 553; and

(iii) Obtains approval from the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The MMS is incorporating each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(c) You may comply with a later edition of a specific document incorporated by reference, only if:

(1) You show that complying with the later edition provides a degree of protection, safety, or performance equal to or better than what would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* You may obtain the documents from the publishing organizations at the addresses given in the following table:

For . . .	Write to . . .
API Recommended Practices	American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005–4070.

(e) This paragraph lists documents incorporated by reference. To easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of documents	Incorporated by reference at . . .
API RP 2A—WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms? Working Stress Design, Twenty-first Edition, December 2000: Errata and Supplement 1, December 2002: Errata and Supplement 2, October 2005.	§ 285.825

§ 285.116 Requests for information on the state of the offshore alternative energy industry.

(a) The Director may, from time to time and at his discretion, solicit information from industry and other relevant stakeholders (including State and local agencies) as necessary to evaluate the state of the offshore alternative energy industry, including the identification of potential challenges or obstacles to its continued development. Such requests for information could relate to the identification of environmental, technical or economic matters that promote or detract from continued development of alternative energy technologies on the OCS. You must respond to such at request in a timely manner, as established in the request. From the information received, the Director may evaluate potential refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and that ensures fair value for use of the Nation's OCS.

(b) MMS may make such requests for information on a regional basis, and may tailor the requests to specific types of alternative energy technologies.

(c) MMS will publish such requests for information by the Director of the Federal Register.

§ 285.117 [Reserved]

§ 285.118 What are my appeal rights?

(a) Any party adversely affected by a decision of an MMS official made under the provisions of this part has the right of appeal under part 290, subpart A, of this title, except for bid acceptance, as covered under paragraph (c) of this section.

(b) A decision will remain in full force and effect during the period in which an appeal may be filed and during an appeal, unless a stay is granted pursuant to 43 CFR 4.21.

(c) Our decision on a bid is the final action of the Department, except that an unsuccessful bidder may apply for reconsideration by the Director.

(1) A bidder whose bid we reject may file a written request for reconsideration with the Director within 15 calendar days of the date of the receipt of the notice of rejection, accompanied by a statement of reasons with one copy to us. The Director will respond in writing either affirming or reversing the decision.

(2) The delegation of review authority to the Office of Hearings and Appeals does not apply to decisions on high bids for leases or grants under this part.

Subpart B—Issuance of OCS Alternative Energy Leases

General Lease Information

§ 285.200 What rights are granted with a lease issued under this part?

(a) A lease issued under this part grants the lessee the right, subject to obtaining the necessary approvals and complying with all provisions of this part, to occupy, and install and operate facilities on, a designated portion of the OCS for the purpose of conducting:

(1) Commercial activities; or

(2) Other limited activities that support, result from, or relate to the production of energy from an alternative energy source.

(b) A lease issued under this part confers on the lessee the right to one or more project easements without further competition for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease.

(1) You must apply for the project easement as part of your Construction and Operations Plan (COP) or General Activities Plan (GAP), as provided under subpart F of this part; and

(2) The MMS will incorporate your approved project easement as an addendum to your lease.

(c) A commercial lease issued under this part may be developed in phases

with MMS approval as provided in § 285.629.

§ 285.201 How will MMS issue leases?

The MMS will issue leases on a competitive basis as provided under §§ 285.210 through 285.225. However, if we determine after public notice of a proposed lease that there is no competitive interest, we will issue leases noncompetitively as provided under §§ 285.230 through 285.231. We will issue leases on forms approved by MMS, and will include terms, conditions and stipulations identified and developed through the process set forth in §§ 285.211 and 285.231.

§ 285.202 What types of leases will MMS issue?

The MMS may issue leases on the OCS for the assessment and production of alternative energy and may authorize a combination of specific activities. We may issue commercial leases or limited leases.

§ 285.203 With whom will MMS consult before issuance of a lease?

For leases issued under this part, by either the competitive or noncompetitive process, MMS will coordinate and consult with relevant Federal agencies, with the Governor of any affected State, and the executive of any affected local government, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA)).

§ 285.204 What areas are available for leasing consideration?

The MMS may offer any appropriately platted area of the OCS as provided in § 285.205 for an alternative energy lease, except any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument.

§ 285.205 How will leases be mapped?

The MMS will prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each lease will be in accordance with the appropriate leasing map or official protraction diagram.

§ 285.206 What is the lease size?

(a) The MMS will determine the size for each lease based on the area required to accommodate the anticipated activities. The processes leading to both competitive and noncompetitive issuance of leases will provide public notice of the lease size adopted. We will delineate leases by using mapped OCS blocks or aggregations of blocks.

(b) The lease size includes the minimum area that will allow the lessee sufficient space to develop the project and manage activities in a manner that is consistent with the provisions of this part. The lease may include whole lease blocks or portions of a lease block.

§ 285.207 through 285.209 [Reserved]

Competitive Lease Process

§ 285.210 How does MMS initiate the competitive leasing process?

The MMS may publish in the **Federal Register** a public notice of Request for Interest to assess interest in leasing all or part of the OCS for activities authorized in this part. The MMS will consider information received in response to a Request for Interest to determine whether there is competitive interest for scheduling sales and issuing leases. We may prepare and issue a national, regional, or more specific schedule of lease sales pertaining to one or more types of alternative energy.

§ 285.211 What is the process for competitive issuance of leases?

The MMS will use auctions to award leases on a competitive basis. We will publish details of each lease sale auction in the **Federal Register**. For each lease sale we will publish a Proposed Sale Notice and a Final Sale Notice. Individual lease sales will include steps such as:

(a) *Call for Information and Nominations (Call).* The MMS will publish in the **Federal Register** Calls for Information and Nominations for leasing in specified areas. In this document we may:

(1) Request comments on areas which should receive special consideration and analysis;

(2) Request comments concerning geological conditions (including bottom hazards); archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and other socioeconomic, biological, and environmental information; and

(3) Suggest areas to be considered by the respondents for leasing.

(b) *Area Identification.* The MMS will identify areas for environmental analysis and consideration for leasing. We will do this in consultation with appropriate Federal agencies, States, local governments, and other interested parties.

(1) We may consider for lease those areas nominated in response to the Call for Information and Nominations, together with other areas that MMS determines are appropriate for leasing.

(2) We will evaluate the potential effect of leasing on the human, marine environments, and develop measures to mitigate adverse impacts, including lease stipulations.

(3) We will consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment; and

(4) We may hold public hearings on the environmental analysis after appropriate notice.

(c) *Proposed Sale Notice.* The MMS will publish the Proposed Sale Notice in the **Federal Register** and send it to the Governor of any affected State.

(d) *Final Sale Notice.* The MMS will publish the Final Sale Notice in the **Federal Register**.

§ 285.212 What must I submit in response to a Request for Interest or a Call for Information and Nominations?

If you are a potential lessee, when you respond to a Request for Interest or a Call, your response must include all of the items listed in paragraphs (a) through (g) of this section.

(a) The area of interest for a possible lease.

(b) A general description of your objectives and the facilities that you would use to achieve those objectives.

(c) A general schedule of proposed activities, including those leading to commercial operations.

(d) Available and pertinent data and information concerning alternative energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. The MMS will protect these data and information from public disclosure to the extent allowed by law.

(e) If available from the appropriate State or local government authority, certification that the proposed activity conforms with State and local energy planning requirements, initiatives or guidance.

(f) Documentation showing that you are qualified to hold a lease, as specified in § 285.107.

(g) Any other information requested by MMS in Request for Interest or Call for Information and Nominations.

§ 285.213 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?

The MMS will use the information received in response to Requests or Calls to:

(a) Identify the lease area;

(b) Develop options for the environmental analysis and leasing

provisions (stipulations, payments, terms and conditions); and

(c) Prepare appropriate documentation to satisfy applicable Federal requirements, such as NEPA, CZMA, the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

§ 285.214 What areas will MMS offer in a lease sale?

The MMS will offer areas for leasing as identified in § 285.211(b) of this part. We will not accept nominations after the Call for Information and Nominations closes.

§ 285.215 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?

For each lease sale, MMS will publish a Proposed Sale Notice and a Final Sale Notice in the **Federal Register**. In the Proposed Sale Notice, we will request public comment on the items listed in paragraphs (a) through (h) of this section. We will consider all public comments received in developing the final lease sale terms and conditions. We will publish the final terms and conditions in the Final Sale Notice. The Proposed Sale Notice and Final Sale Notice will include, or describe the availability of, information pertaining to:

(a) The area available for leasing.

(b) Proposed and final lease provisions and conditions, including, but not limited to:

(1) Lease size;

(2) Lease term;

(3) Payment requirements;

(4) Performance requirements; and

(5) Site specific lease stipulations.

(c) Auction details, including:

(1) Bidding procedures and systems;

(2) Minimum bid;

(3) Deposit amount;

(4) The place and time for filing bids and the place, date and hour for opening bids;

(5) Lease award method; and

(6) Bidding or application instructions.

(d) The official MMS lease form to be used or a reference to that form.

(e) Criteria MMS will use to evaluate competing bids or applications and how the criteria will be used in decision-making for awarding a lease.

(f) Award procedures, including how and when MMS will award leases and how MMS will handle unsuccessful bids or applications.

(g) Procedures for appealing the lease issuance decision.

(h) Execution of the lease instrument.

§ 285.216 through 285.219 [Reserved]

Competitive Lease Award Process

§ 285.220 What auction format may MMS use in a lease sale?

(a) Except as provided in § 285.231, we will hold competitive auctions to award alternative energy leases and will use one of the following auction formats, as determined through the lease sale process and specified in the Proposed Sale Notice and in the Final Sale Notice:

Type of auction	Bid variable	Bidding process
(1) Sealed bidding	A cash bonus or an operating fee rate.	One sealed bid per company per lease or packaged unit.
(2) Ascending bidding	A cash bonus or an operating fee rate.	Continuous bidding per lease.
(3) Two-stage bidding (combination of ascending and sealed bidding).	An operating fee rate in one, both or neither stage and a cash bonus in one, both or neither stage.	Ascending or sealed bidding until: (i) Only two bidders remain, or (ii) More than one bidder offers to pay the maximum bid amount. Stage two sealed or ascending bidding commences at some pre-determined time after the end of stage one bidding.

(b) You must submit your bid and a deposit as specified in §§ 285.500 and 285.501 to cover the bid for each lease area, according to the terms specified in the Final Sale Notice.

§ 285.221 What bidding systems may MMS use for commercial leases and limited leases?

(a) For commercial leases, we will specify minimum bids in the Final Sale Notice and use one of the following bidding systems, as specified in the Proposed Sale Notice and in the Final Sale Notice:

Bid system	Bid variable
(1) Cash bonus with a constant fee rate (decimal).	Cash bonus.
(2) Constant operating fee rate with fixed cash bonus.	A fee rate used in the formula found in § 285.505 of this part to set the operating fee per year during the operations term of your lease.
(3) Sliding operating fee rate with a fixed cash bonus.	A fee rate used in formula in § 285.505 of this part to set the operating fee for the first year of the operations term of your lease. The fee rate for subsequent years changes by a mathematical function we specify in the Final Sale Notice.
(4) Cash bonus *and* constant operating fee rate	Cash bonus as in paragraph (1) of this section and operating fee rate as in paragraph (2) of this section. (Two-stage auction format only.)
(5) Cash bonus *and* sliding operating fee rate	Cash bonus as in paragraph (1) of this section and operating fee rate as in paragraph (3) of this section. (Two-stage auction format only.)

(b) For limited leases, the bid variable will be a cash bonus with a minimum bid as we specify in the Final Sale Notice.

§ 285.222 What does MMS do with my bid?

(a) If sealed bidding is used:

(1) We open the sealed bids at the place, date, and hour specified in the Final Sale Notice for the sole purpose of publicly announcing and recording the bids. We do not accept or reject any bids at that time.

(2) We reserve the right to reject any and all high bids, regardless of the amount offered or bidding system used. We intend to accept or reject all high bids within 90 calendar days, but we may extend that time if necessary.

(b) If we use ascending bidding, we may designate the winning bid solely based on its being the highest bid submitted by a qualified bidder

(qualified to be an OCS lessee under § 285.107).

(c) If we use two-stage bidding, the winning bid will be determined as in paragraph (b) of this section if the auction concludes with an ascending bidding stage or as in paragraph (a) of this section if the auction process concludes with a sealed bidding stage.

(d) We will send a written notice of our decision to accept or reject bids to all bidders whose deposits we hold.

§ 285.223 What does MMS do if there is a tie for the highest bid?

(a) Unless otherwise specified in the Final Sale Notice, except in the first stage of a two-stage bidding auction, if more than one bidder on a lease submits the same high bid amount, the winning bidder will be determined by random selection by lot.

(b) The winning bidder will be subject to final confirmation following determination of bid adequacy.

§ 285.224 What happens if MMS accepts my bid?

If we accept your bid, we will send you a notice with three copies of the lease form.

(a) Within 10 business days after you receive the lease copies, you must:

(1) Execute the lease;

(2) Pay the first 6 months' rental as required in § 285.503;

(3) Pay the balance of the bonus bid as specified in the lease sale notice or in the lease agreement as required in § 285.500;

(4) File financial assurance as required under §§ 285.515 through 285.537.

(b) When you execute three copies of the lease and return the copies to us, we will execute the lease on behalf of the United States and send you one fully executed copy.

(c) You will forfeit your deposit if you do not execute and return the lease within 10 business days of receipt, or otherwise fail to comply with applicable regulations or stipulations in the Final Sale Notice.

(d) We may extend the 10 business day time period for executing and returning the lease if we determine the delay to be caused by events beyond your control.

(e) We reserve the right to withdraw an OCS area in which we have held a lease sale before both you and we execute the lease in that area. If we exercise this right, we will refund your bid deposit, without interest.

(f) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder.

(g) MMS will only accept the highest bid. We will refund the deposit on all other bids.

§ 285.225 What happens if my bid is rejected and what are my appeal rights?

(a) If we reject your bid, we will provide a written statement of reasons and refund any money deposited with your bid, without interest.

(b) You may ask the MMS Director for reconsideration in writing, within 15 business days of bid rejection, under § 285.118(c)(1). We will send you a written response either affirming or reversing the rejection.

§ 285.226 through 285.229 [Reserved]

Noncompetitive Lease Award Process

§ 285.230 May I request a lease if there is no call?

You may submit an unsolicited request for a commercial lease or a limited lease under this part. Your unsolicited request must contain the following information:

(a) The area you are requesting for lease;

(b) A general description of your objectives and the facilities that you would use to achieve those objectives;

(c) A general schedule of proposed activities including those leading to commercial operations;

(d) Available and pertinent data and information concerning alternative energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. We will protect proprietary data and information from public disclosure to the extent allowed by law;

(e) If available from the appropriate State or local government authority, certification that the proposed activity conforms with State and local energy planning requirements, initiatives or guidance;

(f) Documentation showing that you meet the qualifications to become a lessee, as specified in § 285.107; and

(g) An acquisition fee as specified in § 285.502(a).

§ 285.231 How will MMS process my unsolicited request for a noncompetitive lease?

(a) The MMS will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease noncompetitively in accordance with this part. We will not consider an unsolicited request for a lease under this part that is proposed in an area of the OCS that is scheduled for a lease sale under this part.

(b) The MMS will issue a public notice of the request and consider comments received to determine if competitive interest exists.

(c) If MMS determines that competitive interest exists in the lease area:

(1) The MMS will proceed with the competitive process set forth in §§ 285.210 through 285.225; and

(2) If you submit a bid for the lease area in a competitive lease sale, your acquisition fee will be applied to the deposit for your bonus bid.

(3) If you do not submit a bid for the lease area in a competitive lease sale, MMS will not refund your acquisition fee.

(d) If MMS determines that there is no competitive interest in a lease:

(1) We will publish a notice, in the **Federal Register**, of such determination; and

(2) You must submit within 60 days of the date of the notice to MMS:

(i) For a commercial lease, a Site Assessment Plan (SAP), as described in §§ 285.605 through 285.612; or

(ii) For a limited lease, a General Activities Plan (GAP), as described in § 285.640 through 285.647.

(e) If we approve or approve with conditions your SAP or GAP, we may offer you a noncompetitive lease.

(f) If you accept the terms and conditions of the lease then we will issue the lease and you must comply with all terms and conditions of your lease and all applicable provisions of this part.

(g) If you do not accept the terms and conditions, MMS will not issue a lease and we will not refund your acquisition fee.

§ 285.232 through 285.234 [Reserved]

Commercial and Limited Lease Terms

§ 285.235 If I have a commercial lease, how long will my lease remain in effect?

(a) For commercial leases the lease terms are as shown in the following table:

Lease term	Requirements	Automatic extensions
(1) Each commercial lease issued competitively will have a preliminary term of 6 months to submit a Site Assessment Plan (SAP).	The SAP must meet the requirements of §§ 285.605 through 285.612. The preliminary term begins on the effective date of the lease.	If we receive a SAP that satisfies the requirements of §§ 285.605 through 285.612. The preliminary term will be automatically extended for the time necessary for us to conduct technical and environmental reviews of the SAP.
(2) A commercial lease issued noncompetitively does not have a preliminary term. You must submit your SAP within 60 calendar days of MMS issuing a public notice of the determination. Before MMS will issue a lease we must receive your SAP and approve.	The SAP must meet the requirements of §§ 285.605 through 285.612. The site assessment term begins when MMS approves your SAP and issues your lease.	
(3) A commercial lease will have a site assessment term of 5 years to conduct site assessment activities and to submit a Construction and Operations Plan (COP).	The COP must meet the requirements of §§ 285.620 through 285.629 of this part. The site assessment term begins on the date that we approve your SAP.	If we receive a COP that satisfies the requirements of §§ 285.620 through 285.629, the site assessment term will be automatically extended for the period of time necessary for us to conduct technical and environmental reviews of the COP.
(4) A commercial lease will have an operations term of 25 years, unless a longer term is negotiated by applicable parties. A request for lease renewal must be submitted 2 years before the end of the operations term.	The operations term begins on the date that we approve your COP. The lease renewal request must meet the requirements of §§ 285.425 through 428.	
(5) A commercial lease may have additional time added to the operations term through a lease renewal, not to exceed the original term of the lease.	The lease renewal term begins upon expiration of the original operations term.	We may order or grant a suspension of the operations term as provided in §§ 285.415 through 421.

(b) If you do not timely submit a SAP or COP, as appropriate, you may request additional time to extend the preliminary or site assessment term of your commercial lease that includes a revised schedule for submission of a SAP or COP, as appropriate.

§ 285.236 If I have a limited lease, how long will my lease remain in effect?

(a) For limited leases the lease terms are as shown in the following table:

Lease term	Requirements	Extension or suspension
(1) Each limited lease issued competitively has a preliminary term of 6 months to submit a General Activities Plan (GAP).	The GAP must meet the requirements of §§ 285.640 through 285.647. The preliminary term begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 285.640 through 285.647 of this part, the preliminary term will be automatically extended for the period of time necessary for us to conduct a technical and environmental review of the plans.
(2) A limited lease issued noncompetitively does not have a preliminary term. You must submit and MMS must approve your GAP before we will issue a lease.	The GAP must meet the requirements of §§ 285.640 through 285.647. The operations term begins when MMS approves your GAP and issues your lease.	
(3) Each limited lease has an operations term of 5 years for conducting site assessment, technology testing, or other activities.	The operations term begins on the date that we approve your GAP.	We may order or grant a suspension of the operations term as provided in §§ 285.415 through 285.421.

(b) If you do not timely submit a GAP, as appropriate, you may request additional time extend the preliminary term of your limited lease that includes a revised schedule for submission of a GAP.

§ 285.237 What is the effective date of a lease?

(a) A lease issued under this part must be dated and becomes effective as of the first day of the month following the date a lease is signed by the lessor.

(b) If the lessee submits a written request and MMS approves, a lease may be dated and become effective the first day of the month in which it is signed by the lessor.

§ 285.238 How can I conduct alternative energy research activities on the OCS?

(a) The Director may make areas available on the OCS for alternative energy research activities that support the future production, transportation, and transmission of alternative energy managed by the U.S. Department of Energy (DOE).

(b) In making areas available on the OCS for DOE-managed alternative energy research under this provision, MMS will coordinate and consult with the Department of Energy and other relevant Federal Agencies and affected State and affected local government executives.

(c) MMS may issue leases for DOE-managed research activities only in areas for which the Director has determined, after public notice and opportunity to comment, that no competitive interest exists.

(d) The Director and the Secretary of Energy, or their authorized representatives, will negotiate alternative energy leases under this provision on a case-by-case basis. The framework for such negotiations, and standard terms and conditions of such leases, may be set forth in a memorandum of agreement or other interagency agreement between the MMS and the Department of Energy.

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Alternative Energy Activities

ROW Grant and RUE Grants

§ 285.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?

(a) A ROW grant authorizes the holder to install on the OCS cables, pipelines and associated facilities that involve the transportation or transmission of electricity or other energy product from alternative energy projects not on the OCS.

(b) A RUE grant authorizes the holder to construct and maintain facilities or other installations on the OCS that support the production, transportation or transmission of electricity or other energy product from any alternative energy, provided the generation or production of such electricity or other energy product does not occur on an alternative energy lease issued under this part.

(c) You do not need a ROW grant or RUE grant for a project easement authorized under subpart B of this part to serve your lease.

§ 285.301 What do ROW grants and RUE grants include?

(a) A ROW grant:

(1) Includes the full length of the corridor on which a cable, pipeline or associated facility is located;

(2) Is 200 feet (61 meters) in width, centered on the cable or pipeline, unless safety and environmental factors during construction and maintenance of the associated cable or pipeline require a greater width; and

(3) For the associated facility, is limited to the area reasonably necessary for a power or pumping station or other accessory facility.

(b) A RUE grant includes the site on which a facility or other structure is located and the areal extent of anchors, chains and other equipment associated with a facility or other structure. The specific boundaries of a RUE will be determined by MMS on a case-by-case basis and set forth in each RUE grant.

§ 285.302 What are the general requirements for ROW grant and RUE grant holders?

(a) To acquire a ROW grant or RUE grant you must provide evidence that you meet the qualifications as required in § 285.107; and

(b) A ROW grant or RUE grant is subject to the following conditions:

(1) The rights granted will not prevent or interfere in any way with the management, administration, or the granting of other rights by the United States, either before or after the granting of the ROW or RUE, provided that any subsequent authorization issued by MMS in the area of a previously issued ROW grant or RUE grant may not unreasonably interfere with activities approved under such a grant; and

(2) The holder agrees that the United States, its lessees, or other ROW grant or RUE grant holders, may use or occupy any part of the ROW grant or RUE grant not actually occupied or necessarily incident to its use for any necessary activities.

§ 285.303 How long will my ROW grant or RUE grant remain in effect?

Your ROW grant or RUE grant will remain in effect for as long as the associated activities are properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant.

§ 285.304 [Reserved]

Obtaining ROW Grants and RUE Grants

§ 285.305 How do I request a ROW grant or RUE grant?

You must submit to MMS one paper copy and one electronic copy of a request for a new or modified ROW grant or RUE grant. You must submit a separate request for each ROW grant or RUE grant you are requesting. The request must contain the following information:

(a) The area you are requesting for a ROW grant or RUE grant;

(b) A general description of your objectives and the facilities that you would use to achieve those objectives;

(c) A general schedule of proposed activities; and

(d) Pertinent information concerning environmental conditions in the area of interest.

§ 285.306 What action will MMS take on my request?

The MMS will consider requests for ROW grants and RUE grants on a case-by-case basis and may issue a grant competitively, as provided in § 285.308, or noncompetitively if we determine after public notice that there is no competitive interest. The MMS will coordinate and consult with relevant Federal agencies, with the Governor of any affected State, and the executive of any affected local government.

(a) In response to an unsolicited request for a ROW grant or RUE grant, the MMS will first determine if there is competitive interest as provided in § 285.307.

(b) If MMS determines that there is no competitive interest in a ROW grant or RUE grant, we will:

(1) In consultation with you, establish the terms and conditions for the grant;

(2) Require you to submit a General Activities Plan (GAP), as described in §§ 285.640 through 285.647, within 60 calendar days of the determination of no competitive interest; and

(3) Evaluate your request for a noncompetitive grant and GAP simultaneously.

(c) If we award your ROW grant or RUE grant competitively, you must submit and receive MMS approval of your GAP as provided in §§ 285.640 through 285.647.

§ 285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?

To determine whether or not there is competitive interest:

(a) We will publish a public notice, describing the parameters of the project, to give affected and interested parties an opportunity to comment on the proposed ROW grant or RUE grant area.

(b) We will evaluate any comments received on the notice and make a determination of the level of competitive interest.

§ 285.308 How will MMS conduct an auction for ROW grants and RUE grants?

(a) If MMS determines that there is competitive interest, we will:

(1) Publish a notice of each grant auction in the **Federal Register** describing auction procedures, allowing interested persons 30 calendar days to comment; and

(2) Conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants will be conducted following the same process for leases set forth in §§ 285.211 through 285.225.

(b) If you are the successful bidder in an auction, you must pay the first year's rental as provided in § 285.316.

§ 285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?

If we approve or approve with conditions your GAP, we may offer you a noncompetitive grant.

(a) If you accept the terms and conditions of the grant then we will issue the grant and you must comply with all terms and conditions of your grant and all applicable provisions of this part; and

(b) If you do not accept the terms and conditions, MMS will not issue a grant.

§ 285.310 What is the effective date of a ROW grant or RUE grant?

Your ROW grant or RUE grant becomes effective on the date established by MMS on the ROW grant or RUE grant instrument.

§ 285.311 through 285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

§ 285.315 What deposits are required for a competitive ROW grant or RUE grant?

(a) You must make a deposit as required in § 285.501(a) regardless of whether the auction is sealed-bid, oral, electronic, or other auction format. MMS will specify in the sale notice the official to whom you must submit the payment, the time by which the official must receive the payment, and the forms of acceptable payment.

(b) If your high bid is rejected, we will provide a written statement of reasons.

(c) For all rejected bids, we will refund, without interest, any money deposited with your bid.

§ 285.316 What payments are required for ROW grants or RUE grants?

Before we issue the ROW grant or RUE grant you must pay:

(a) Any balance on accepted high bids to MMS, as provided in the sale notice; and

(b) An annual rental for the first year of the grant, as specified in § 285.507(a).

Subpart D—Lease and Grant Administration

Noncompliance and Cessation Orders

§ 285.400 What happens if I fail to comply with this part?

(a) The MMS may take appropriate corrective action under this part if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, any order of the Director, the provisions of a lease or grant issued under this part, or the requirements of an approved plan or other approval under this part.

(b) The MMS may issue to you a notice of noncompliance if it determines that there has been a violation of the regulations in this part, any order of the Director, or any provision of your lease, grant or other approval issued under this part. When issuing a notice of noncompliance, MMS will serve you at your last known address.

(c) A notice of noncompliance will tell you how you failed to comply with this part, any order of the Director, and/or the provisions of your lease, grant or other approval, and will specify what you must do to correct the noncompliance and the time limits within which you must act.

(d) Failure of a lessee, operator, or grant holder under this part to take the actions specified in a notice of noncompliance within the time limit specified provides the basis for MMS to issue a cessation order as provided in § 285.401, and/or a cancellation of the lease or grant as provided in § 285.437.

(e) If the MMS determines that any incident of noncompliance poses an imminent threat of serious or irreparable damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment, or to sites, structures, or objects of historical or archaeological significance, MMS may include with its notice of noncompliance an order directing you to take immediate remedial action, including, when appropriate, a cessation order, to alleviate threats and to abate the violation.

(f) The MMS may assess civil penalties as authorized by Section 24 of the OCS Lands Act if you fail to comply with any provision of this part or any term of a lease, grant or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action. Civil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR Part 250, subpart N.

(g) You may be subject to criminal penalties as authorized by Section 24 of the OCS Lands Act.

§ 285.401 When may MMS issue a cessation order?

(a) The MMS may issue a cessation order during the term of your lease or grant when you fail to comply with an applicable law, regulation, order, or provision of a lease, grant, plan or other MMS approval under this part. Except as provided in § 285.400(e), MMS will allow you a period of time to correct any noncompliance before issuing an order to cease activities.

(b) A cessation order will set forth what measures you are required to take, including reports you are required to prepare and submit to MMS, in order to resume activities on your lease or grant.

§ 285.402 What is the effect of a cessation order?

(a) Upon receiving a cessation order, you must cease all activities on your lease or grant as specified in the order. The MMS may authorize certain activities during the period of the cessation order.

(b) A cessation order will last for the period specified in the order or as otherwise specified by MMS. If MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, the Secretary may initiate cancellation of your lease or grant as provided in § 285.437.

(c) A cessation order does not extend the term of your lease or grant for the period you are prohibited from conducting activities.

(d) You must continue to make all required payments on your lease or grant during the period a cessation order is in effect.

§ 285.403 [Reserved]

§ 285.404 [Reserved]

Designation of Operator

§ 285.405 How do I designate an operator?

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 285.610(a)(3)), COP (under § 285.626(b)), or GAP (under § 285.645(a)(3)), as applicable. If no operator is designated in a SAP, COP, or GAP, MMS will deem the lessee or grant holder to be the operator.

(b) An operator must be designated in any SAP, COP, or GAP if there is more than one lessee or grant holder for any individual lease or grant.

(c) Once approved in your plan, the designated operator is authorized to act on your behalf and authorized to perform activities necessary to fulfill your obligations under the OCS Lands Act, the lease or grant, and the regulations in this part.

(d) You, or your designated operator, must immediately provide MMS a written notification of any change of address.

(e) If there is a change in the designated operator, you must immediately provide written notice to MMS and identify the new designated operator. The lessee(s) or grant holders is the operator and responsible for compliance until MMS approves designation of the new operator.

(f) Designation of an operator under any lease or grant issued under this part does not relieve the lessee or grant holder of its obligations under this part or its lease or grant.

(g) A designated operator performing activities on the lease must comply with all regulations governing those activities and may be held liable or penalized for any noncompliance, notwithstanding their resignation as operator.

§ 285.406 Who is responsible for fulfilling lease and grant obligations?

(a) When you are not the sole lessee or grantee, you and your co-lessee(s) or co-grantee(s) are jointly and severally responsible for fulfilling your obligations under the lease or grant and the provisions of this part, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under the lease or grant and this part, MMS may require you or any or all of your co-lessees or co-grantees to fulfill those obligations or other operational obligations under the Act, the lease, grant, or the regulations.

(c) Whenever the regulations in this part require the lessee or grantee to conduct an activity in a prescribed manner, the lessee or grantee, and operator (if one has been designated) are jointly and severally responsible for complying with the regulation.

§ 285.407 [Reserved]

Lease or Grant Assignment

§ 285.408 May I assign my lease or grant interest?

(a) You may assign all or part of your lease or grant interest, including record title, subject to MMS approval under this subpart. Each instrument that creates or transfers an interest must describe the entire tract or describe by officially designated subdivisions the interest you propose to create or transfer.

(b) You may assign a lease or grant interest by submitting one paper copy and one electronic copy of an assignment application to MMS. The assignment application must include:

(1) The MMS-assigned lease or grant number;

(2) A description of the geographic you are assigning;

(3) The names of both the assignor and the assignee, if applicable;

(4) The names and telephone numbers of the contacts for both the assignor and the assignee;

(5) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the lease or grant;

(7) The qualifications of the assignee as required of an applicant for a lease or grant in § 285.107; and

(8) A statement on how the assignee complies with the financial assurance requirements of §§ 285.515 through 285.536. No assignment will be approved until the assignee provides the required financial assurance.

(c) If you submit an application to assign a lease or grant, you will be billed for all payments that are or become due on the lease or grant until the date MMS approves the assignment.

(d) The assignment takes effect on the date MMS approves your application.

§ 285.409 How do I request approval of a lease or grant assignment?

(a) You must request approval of each assignment on a form approved by MMS and submit originals of each instrument that creates or transfers ownership of record title or certified copies thereof within 90 calendar days after the last party executes the transfer agreement.

(b) Any assignee will be subject to all the terms and conditions of your original lease or grant, including the requirement to furnish financial assurance in the amount required in §§ 285.515 through 285.536.

(c) The assignee must submit proof of eligibility and other qualifications specified in § 285.107.

(d) An authorized official, on behalf of the holder of a lease or grant or portion thereof, must furnish evidence of authority to execute the assignment.

§ 285.410 How does an assignment affect the assignor's liability?

As assignor, you are liable for all obligations, monetary and non-monetary, that accrued under your lease or grant before MMS approves your assignment. Our approval of the assignment does not relieve you of these accrued obligations. MMS may require you to bring the lease or grant into compliance to the extent the obligation accrued before the effective date of your assignment if your assignee, or subsequent assignees, fails to perform any obligation under the lease or grant.

§ 285.411 How does an assignment affect the assignee's liability?

(a) As assignee, you and any subsequent assignees are liable for all lease or grant obligations that accrue after MMS approves the assignment. As assignee, you must comply with all the terms and conditions of the lease or grant and all applicable regulations, remedy all existing environmental and operational problems on the lease or grant and reclaim the site as required under subpart I of this part.

(b) Assignees are bound to comply with each term or condition of the lease or grant and the regulations in this subchapter. You are jointly and severally liable for the performance of all obligations under the lease or grant and under the regulations in this part with each prior lessee who held an interest at the time the obligation accrued, unless this part provides otherwise.

§ 285.412 through 285.414 [Reserved]

Lease or Grant Suspension

§ 285.415 What is a lease or grant suspension?

(a) A suspension is an interruption of the term of your lease or grant that may occur:

(1) As approved by MMS at your request, as provided in § 285.416; or

(2) As ordered by MMS, as provided in § 285.417.

(b) A suspension extends the term of your lease or grant for the length of time the suspension is in effect.

(c) Activities may not be conducted on your lease or grant during the period of a suspension except as expressly authorized by MMS by the terms of the suspension.

§ 285.416 How do I request a lease or grant suspension?

You must submit a written request to MMS that includes the following information no later than 90 calendar days prior to the expiration of your appropriate lease or grant term:

(a) The reasons you are requesting suspension of your lease or grant term, and the length of additional time requested;

(b) An explanation of why the suspension is necessary in order to ensure full enjoyment of your lease or grant and why it is in the Lessor's or Grantor's interest to approve the suspension;

(c) If you do not timely submit a SAP, COP, or GAP, as required, you may request a suspension to extend the preliminary or site assessment term of your lease or grant, as applicable that includes a revised schedule for submission of a SAP, COP, or GAP as appropriate; and

(d) Any other information MMS may require.

§ 285.417 When may MMS order a suspension?

(a) The MMS may order a suspension under the following circumstances:

(1) When necessary to comply with judicial decrees prohibiting some or all activities under your lease;

(2) When continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance; or

(3) When the suspension is necessary for reasons of national security or defense.

(b) If MMS orders a suspension under paragraph (a)(2) of this section, and if

you wish to resume activities, we may require you to conduct a site-specific study that evaluates the cause of the harm, the potential damage, and the available mitigation measures.

(1) You may be required to pay for the study.

(2) You must furnish one paper copy and one electronic copy of the study and results to us.

(3) We will make the results available to other interested parties and to the public.

(4) We will use the results of the study and any other information that becomes available:

(i) To decide if the suspension order can be lifted; and

(ii) To determine any actions that you must take to mitigate or avoid any damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance.

§ 285.418 How will MMS issue a suspension?

(a) The MMS will issue a suspension order orally or in writing.

(b) A suspension order issued orally will be followed by a written explanation by MMS as soon as practicable.

(c) The written explanation will describe the effect of the suspension order on your lease or grant and any associated activities. The MMS may authorize certain activities during the period of the suspension, as set forth in the suspension order.

§ 285.419 What are my immediate responsibilities if I receive a suspension order?

You must take action to comply fully with the terms of a suspension order upon receipt.

§ 285.420 What effect does a suspension order have on my payments?

(a) While MMS evaluates your request for a suspension under § 285.416, you must continue to fulfill your payment obligation until the end of the original term of your lease or grant. If our evaluation goes beyond the end of the original term of your lease or grant, the term of your lease or grant will be extended for the period of time necessary for MMS to complete its evaluation of your request but you will not be required to make payments.

(b) If MMS approves your request for a suspension as provided in § 285.416, we may suspend your payment obligation, as appropriate for the term that is suspended, depending on the reasons for the requested suspension.

(c) If MMS orders a suspension as provided in § 285.417, your payments, as appropriate for the term that is suspended, will be waived during the suspension period.

§ 285.421 How long will a suspension be in effect?

(a) Except as provided below, a suspension will be in effect for the period specified by MMS.

(b) The MMS will not approve a suspension request pursuant to § 285.416 for a period longer than 2 years.

(c) If MMS determines that the circumstances giving rise to a suspension ordered under § 285.417 cannot be resolved within 5 years, the Secretary may initiate cancellation of the lease or grant as provided in § 285.437.

§ 285.422 through 285.424 [Reserved]

Lease or Grant Renewal

§ 285.425 May I obtain a renewal of my lease or grant before it terminates?

You may request renewal of the operations term of your lease or the original authorized term of your grant. The MMS, at its discretion, may approve a renewal request to conduct substantially similar activities as were originally authorized under the lease or grant. The MMS will not approve a renewal request that involves development of alternative energy not originally authorized in the lease or grant. The MMS may revise or adjust payment terms of the original lease, as a condition of lease renewal.

§ 285.426 When must I submit my request for renewal?

(a) You must request a renewal from MMS:

(1) No later than 180 calendar days before the termination date of your limited lease or grant.

(2) No later than 2 years before the termination date of the operations term of your commercial lease.

(b) You must submit to MMS all information it requests pertaining to your lease or grant and your renewal request.

§ 285.427 How long is a renewal?

The MMS will set the term of a renewal on a case-by-case basis not to exceed the original term of the lease or grant.

§ 285.428 What effect does applying for a renewal have on my activities and payments?

If you timely request a renewal:

(a) You may continue to conduct activities approved under your lease or grant under the original terms and conditions.

(b) You may request a suspension of your lease or grant as provided in § 285.416 while MMS considers your request.

(c) For the period MMS considers your request for renewal, you must continue to make all payments in accordance with the original terms and conditions of your lease or grant.

§ 285.429 through 285.431 [Reserved]

Lease or Grant Termination

§ 285.432 When does my lease or grant terminate?

Your lease or grant terminates on whichever of the following dates occurs first:

(a) The expiration of the applicable term of your lease or grant, unless your term is automatically extended under §§ 285.235 or 285.236, or your lease or grant is suspended or renewed as provided in this subpart;

(b) A cancellation, as set forth in § 285.437; or

(c) Relinquishment, as set forth in § 285.435.

§ 285.433 What must I do after my lease or grant terminates?

(a) After your lease or grant terminates, you must:

(1) Make all payments due, including any accrued rentals and deferred bonuses; and

(2) Perform any other outstanding obligations under the lease or grant within 6 months.

(b) Within 1 year following termination of a lease or grant, you must remove or dispose of all facilities, installations, and other devices permanently or temporarily attached to the seabed on the OCS in accordance with a plan or application approved by MMS under subpart I of this part.

(c) If you fail to comply with your approved decommissioning plan or application:

(1) The MMS may call for the forfeiture of your financial assurance; and

(2) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

§ 285.434 [Reserved]

Lease or Grant Relinquishment

§ 285.435 How can I relinquish a lease or a grant or parts of a lease or grant?

(a) You may surrender the lease or grant or an officially designated subdivision thereof by filing one paper copy and one electronic copy of a

relinquishment application with MMS. A relinquishment takes effect on the date we approve your application, subject to the continued obligation of the lessee and the surety to:

(1) Make all payments due, including any accrued rentals and deferred bonuses;

(2) Decommission all facilities on the lease or grant to be relinquished to the satisfaction of MMS; and

(3) Perform any other outstanding obligations under the lease or grant.

(b) Your relinquishment application must include:

(1) Company name;

(2) Contact name;

(3) Telephone number;

(4) Fax number;

(5) E-mail address;

(6) The MMS-assigned lease or grant number, and, if applicable, the name of any facility;

(7) A description of the geographic area you are relinquishing;

(8) The name, title, and signature of your authorizing official (the name, title, and signature must match exactly the name, title, and signature in MMS qualification records); and

(9) A statement that you will adhere to the requirements of subpart I of this part.

(c) If you have submitted an application to relinquish a lease or grant, you will be billed for any outstanding payments that are due before the relinquishment takes effect as provided in paragraph (a) of this section.

Lease or Grant Contraction

§ 285.436 Can MMS require lease or grant contraction?

At an interval no more frequent than every 5 years, the MMS may review your lease or grant area to determine whether the lease or grant area is larger than needed to develop the project and manage activities in a manner that is consistent with the provisions of this part. MMS will notify you of our proposal to contract the lease or grant area.

(a) MMS will give you the opportunity to present orally or in writing information demonstrating that you need the area in question to manage lease activities consistent with these regulations.

(b) Prior to taking action to contract the lease or grant area, MMS will issue a decision addressing your contentions that the area is needed.

(c) You may appeal this decision under § 285.118 of this part.

Lease or Grant Cancellation

§ 285.437 When can my lease or grant be canceled?

(a) The Secretary will cancel any lease or grant issued under this part upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee or grant holder.

(b) The Secretary may cancel any lease or grant issued under this part when:

(1) The Secretary determines after notice and opportunity for a hearing that with respect to the lease that would be canceled, the lessee has failed to comply with any applicable provision of the OCS Lands Act or these regulations, any order of the Director, or any term, condition or stipulation contained in the lease or grant and the failure to comply continued 30 calendar days (or other period MMS specifies) after you receive notice from MMS. The Secretary will mail a notice by registered or certified letter to the lessee or grant holder at its record post office address.

(2) The Secretary determines after notice and opportunity for a hearing that you have terminated commercial operations as provided in § 285.635, or other approved activities as provided in § 285.656.

(3) Required by national security or defense; or

(4) The Secretary determines after notice and opportunity for a hearing that continued activity under the lease or grant:

(i) Would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(ii) That the threat of harm or damage would not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or grant in force.

(c) If the Secretary cancels a lease or grant under (b)(3) or (b)(4) of this section, the Federal government may provide compensation as appropriate to the extent funds are authorized and appropriated for such purposes.

Subpart E—Payments and Financial Assurance Requirements

Payments

§ 285.500 How do I make payments under this part?

(a) For acquisition fees, or rentals paid for the preliminary term of your lease, you must make credit card or automated clearing house (ACH) payments through the Pay.Gov Web site, and you must include one copy of the Pay.Gov confirmation receipt page with your unsolicited request or signed lease instrument. You may access the Pay.Gov Web site through links on the MMS Offshore Web site at: *http://www.mms.gov/offshore/homepage* or directly through Pay.Gov at: *https://www.pay.gov/paygov/.*

(b) For rentals during the preliminary term or site assessment term or operating fees during the operations term, you must make your payments as required in § 218.51 of this chapter.

(c) This table summarizes payments you must make for leases and grants, unless otherwise specified in the Final Sale Notice.

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Lease or Grant Type	Payment	Amount	Due Date	Payment Mechanism	Section Reference
(1) Lease issued competitively	Bid Deposit	As set in Final Sale Notice/depends on bid	With bid	Pay.Gov	§ 285.501
	Bonus Balance		Lease issuance	Per § 218.51	
(2) Lease issued non-competitively	Acquisition fee	$0.25 per acre	With application	Pay.Gov	§ 285.502
(3) ROW grant or RUE grant		None	na	na	
(4) Commercial and Limited lease	Initial Rental (6 months)	$3.00 per acre per year	Lease issuance	Pay.Gov	§ 285.503 and § 285.504
	Subsequent Rental		Annually	Per § 218.51	
(5) Project easement	Initial Rental	Greater of $5.00 per acre per year or $450 per year	When operations term for associated lease starts	Pay.Gov	§ 285.506
	Subsequent Rental		Annually	Per § 218.51	
(6) ROW grant and RUE grant	Initial Rental	$70 per statute mile, and the greater of $5.00 per acre per year or $450 per year	Grant Issuance	Pay.Gov	§ 285.507
	Subsequent Rental		Annually or in 5-year batches	Per § 218.51	
(7) Commercial lease	Operating fee	Power price * installed capacity * capacity (efficiency) factor * fee rate, or rental set in Final Sale Notice	Annually	Per § 218.51	§ 285.505

§ 285.501 What deposits will MMS collect for a competitively issued lease, ROW grant, or RUE grant?

(a) For a competitive lease or grant we offer through sealed bidding, you must submit a deposit of 20 percent of the total bid amount unless some other amount is specified in the Final Sale Notice.

(b) For a competitive lease we offer through ascending bidding, you must submit a deposit as established in the Final Sale Notice.

(c) You must pay any balances on accepted high bids in accordance with the Final Sale Notice, these regulations and your lease or grant instrument.

(d) The deposit will be forfeited for any successful bidder who fails to execute the lease within the prescribed time or otherwise does not comply with the applicable regulations or stipulations in the Final Sale Notice.

§ 285.502 What initial payments will MMS require to obtain a noncompetitive lease, ROW grant, or RUE grant?

When requesting a noncompetitive lease, you must meet the initial payment requirements of this section, unless specified otherwise in your lease instrument. No advance payment is required when requesting noncompetitive ROW grants and RUE grants.

(a) If you request a noncompetitive lease, you must submit an acquisition fee of $0.25 per acre as provided in § 285.500.

(b) If we determine that there is no competitive interest we will then:

(1) Retain your acquisition fee if we issue you a lease.

(2) Refund your acquisition fee, without interest, if we do not issue your requested lease.

(c) If we determine that there is a competitive interest in an area you requested, then we will proceed with a competitive lease sale process provided for in subpart B of this part, and we will:

(1) Apply your acquisition fee to the required deposit for your bid amount, if you submit a bid;

(2) Apply your acquisition fee to your bonus bid, if you acquire the lease; or

(3) Retain your acquisition fee if you do not bid for or acquire the lease.

§ 285.503 What rentals will MMS collect on a commercial lease?

(a) The rental for a commercial lease is $3.00 per acre per year, unless otherwise established in the Final Sale Notice.

(1) You must pay the first 6 months' rental as provided in § 285.500 when we issue your lease.

(2) You must pay rentals at the beginning of each subsequent one year period in accordance with the regulations at § 218.51 of this chapter on the entire lease area until we approve your COP or as otherwise specified in the Final Sale Notice.

(b) After your lease enters its operations term, you must pay operating fees as specified in § 285.505, unless we specify in the Final Sale Notice a rental payment instead of an operating fee during the operating term of the lease.

(1) If you develop your commercial lease in phases, as approved by us in your COP under § 285.629, you must pay:

(i) Rentals on the portion of the lease that is not presently authorized for commercial operations, and

(ii) Operating fees on the portion of the lease that is presently authorized for commercial operations, as specified in § 285.505, unless we specify in the Final Sale Notice a rental payment instead of an operating fee during the operating term of the lease.

(c) You must pay the rental for a project easement in addition to lease rental as provided in § 285.506. You must commence rental payments for your project easement upon our approval of your COP or GAP.

§ 285.504 What rentals will MMS collect on a limited lease?

(a) The rental for a limited lease is $3.00 per acre per year, unless otherwise established in the Final Sale Notice and your lease instrument.

(b) You must pay the first 6 months' rental when MMS issues your limited lease as provided in § 285.500.

(c) You must pay rentals at the beginning of each subsequent one year period on the entire lease area for the duration of your operations term in accordance with the regulations at § 218.51 of this chapter.

§ 285.505 What operating fees will MMS collect from a commercial lease?

Unless we substitute a rental payment obligation, you must pay operating fees on your commercial lease during the operations term, as described in this section.

(a) We will determine the annual operating fee for activities relating to the generation of electricity conducted during the operations term of your lease based on the following formula, F = M * H * c * P * r where:

(1) F is the dollar amount of the annual operating fee;

(2) M is facility installed capacity expressed in megawatts;

(3) H is the number of hours in a year, equal to 8760, used to calculate an annual payment;

(4) c is a ''capacity factor'' representing the anticipated efficiency of the facility's operation expressed as a decimal between zero and one;

(5) P is a measure of the retail electric power price expressed in dollars per megawatt hour, as provided in paragraph (c)(2) of this section; and

(6) r is the operating fee rate and expressed as a decimal between zero and one.

(b) The annual operating fee formula relating to the value of annual electricity generation is restated below:

F		M		H		c		P		r
(annual operating fee)	=	(installed capacity)	*	(hours per year)	*	(capacity factor)	*	(power price)	*	(operating fee rate)

Example: The operating fee for a 150 megawatt facility with an anticipated capacity factor of 0.35 operating in a region with a typical power price of $65 per megawatt hour and a fee rate of 0.02 would be just under $0.6 million per year (150 megawatts times 8,760 hours per year times 0.35 times $65 per megawatt hour times 0.02).

(c) We will specify operating fee parameters for commercial leases issued competitively in the Final Sale Notice and in the lease instrument for those issued noncompetitively.

(1) Unless we specify otherwise, we intend to set the operating fee rate (r) at 0.01 for the first two years of the operations term, and at 0.02 in the third and remaining years of the operations term. We may apply a different fee rate for new projects (*i.e.* a new generation based on new technology) after considering factors such as program objectives, state of the industry, project type, and project potential. Also, we may agree to reduce or waive the fee rate under § 285.509 for a given project.

(2) The power price (P) will be determined based on the prior year's average retail power price in the State in which a project's transmission cables make landfall, as published by the Department of Energy, Energy Information Administration. If, at the time the annual operating fee payment is due, the prior year's average retail power price in unavailable, the lessee shall calculate the operating fee based on the most recent average annual retail power price published by the Department of Energy, Energy Information Administration.

(3) We will select the capacity factor (C) based upon applicable analogs drawn from present and future domestic and foreign projects that operate in comparable conditions and on comparable scales. Upon the completion of the first year of commercial operations on the lease, MMS may adjust the capacity factor as necessary (to accurately represent a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity). Thereafter, MMS may adjust the capacity factor (to accurately represent a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity) no earlier than the completion of the sixth year of operation, or any five year period thereafter. The operator or lessee may request review and adjustment of the capacity factor under § 285.509 of this part.

(4) We will use the installed capacity (M) of the equipment you actually install.

(d) You must submit all operating fee payments to MMS in accordance with the regulations at § 218.51 of this chapter.

(e) We will establish the operating fee in the final sale notice or in the lease instrument on a case-by-case basis for activities conducted during the operations term that do not relate to the generation of electricity (*e.g.* hydrogen).

§ 285.506 What rental payments will MMS collect on a project easement?

(a) You must pay us a rental fee for your project easement of the greater of $5.00 per acre per year or $450 per year, unless specified otherwise in the Final Sale Notice.

(1) The size of the project easement area for a cable or a pipeline is the full length of the corridor and a width of 200 feet (61 meters), centered on the cable or pipeline.

(2) The size of a project easement area for an accessory platform is limited to the aerial extent of anchor chains and other facilities and devices associated with the accessory.

(b) You must commence rental payments for your project easement upon our approval of your COP or GAP.

(1) You must make the first rental payment as provided in § 285.500.

(2) You must submit all subsequent rental payments to MMS in accordance with the regulations at § 218.51 of this chapter.

(3) You must continue to pay the rental for your project easement until your lease is terminated.

§ 285.507 What rental payments will MMS collect on ROW grants or RUE grants associated with alternative energy projects?

(a) For each ROW grant we have approved under subpart C of this part, you must pay an annual rental as

follows, unless specified otherwise in the Final Sale Notice:

(1) $70 for each nautical mile or part of a nautical mile of OCS that your right-of way crosses; and

(2) An additional $5.00 per acre, subject to a minimum of $450 for use of the entire affected area, if you hold a ROW grant that includes a site outside the corridor of a 200-foot width (61 meters), centered on the cable or pipeline. The affected area includes the areal extent of anchor chains, risers, and other devices associated with a site outside the corridor.

(b) For each RUE grant we have approved under subpart C of this part, you must pay a rental fee equal to the greater of:

(1) $5.00 per acre per year; or

(2) $450 per year.

(c) You must make the rental payments required by paragraphs (a) and (b) of this section on:

(1) An annual basis;

(2) For a 5-year period; or

(3) For multiples of 5 years.

(c) You must make the first annual rental payment upon approval of your ROW grant or RUE grant request as provided in § 285.500 and all subsequent rental payments to MMS in accordance with the regulations at § 218.51 of this chapter.

§ 285.508 Who is responsible for submitting lease or grant payments to MMS?

(a) For each lease, ROW grant, or RUE grant issued under this part, you must identify one person who is responsible for all payments due and payable under the provisions of the lease or grant. The responsible person identified is designated as the payor and you must document acceptance of such responsibilities as provided in § 218.52 of this chapter.

(b) All payors must submit payments, and maintain auditable records in accordance with guidance we issue or any applicable regulations in subchapter A of this chapter. In addition, the lessee or grant holder must also maintain such auditable records.

§ 285.509 May MMS reduce or waive lease or grant payments?

(a) The MMS Director may reduce or waive the rental or operating fee, including components of the operating fee such as the fee rate or capacity factor, when the Director determines that it is necessary to encourage continued or additional activities.

(b) When requesting a reduction or waiver, you must submit an application to us that includes all of the following:

(1) The number of the lease, ROW grant, or RUE grant involved;

(2) Name of each lessee or grant holder of record;

(3) Name of each operator;

(4) A demonstration that:

(i) Continued activities would be uneconomic without the requested reduction or waiver or

(ii) A reduction or waiver is necessary to encourage additional activities; and

Any other information required by the Director.

(c) No more than six years of your operations term will be subject to a full waiver of the operating fee.

§ 285.510 through 285.514 [Reserved]

Basic Financial Assurance Requirements for Commercial Leases

§ 285.515 What financial assurance must I provide when I obtain my commercial lease?

(a) Before MMS will issue your commercial lease or approve an assignment of an existing commercial lease, you (or, for an assignment, the proposed assignee) must guarantee compliance with all terms and conditions of the lease by providing either:

(1) A $100,000 minimum lease-specific bond; or

(2) Another approved security as specified in § 285.526.

(b) You meet the financial assurance requirements under this subpart if your designated lease operator provides a minimum, lease-specific bond that guarantees compliance with all terms and conditions of the lease.

(1) The dollar amount of the minimum, lease-specific financial assurance in (a)(1) of this section will be adjusted to reflect changes in the Consumer Price Index–All Urban Consumers (CPI–U) or a substantially equivalent index if the CPI–U is discontinued.

(2) The first CPI–U based adjustment can be made no sooner than the 5-year anniversary of the adoption of this rule. Subsequent CPI–U-based adjustments may be made every 5 years thereafter.

§ 285.516 What are the financial assurance requirements for each stage of my commercial lease?

(a) The basic financial assurance requirements for each stage of your commercial lease are as follows:

Before MMS will. . .	You must provide . . .
(1) Issue a commercial lease or approve an assignment of an existing commercial lease.	A $100,000 minimum lease-specific financial assurance.
(2) Approve your Site Assessment Plan (SAP)	A SAP bond or other financial assurance, in an amount determined by MMS, if upon reviewing your SAP, MMS determines that a SAP bond is required in addition to your minimum lease-specific bond, due to the complexity, number, and location of any facilities involved in your site assessment activities.
(3) Approve your Construction and Operations Plan (COP).	A COP bond or other financial assurance, in an amount determined by MMS based on the complexity, number, and location of all facilities involved in your planned activities, including commercial operation, and your anticipated decommissioning costs. The COP financial assurance requirement will be in addition to your lease-specific bond and, if applicable, SAP bond.

(b) Each bond or other financial assurance must guarantee compliance with all terms and conditions of the lease. You may provide a new bond or increase the amount of your existing bond, to satisfy any additional financial assurance requirements.

§ 285.517 How will MMS determine the amounts of the SAP and COP financial assurance requirements associated with commercial leases?

(a) The MMS will base the determination for the amounts of the SAP and COP financial assurance requirements on estimates of the cost to meet all accrued lease obligations.

(b) We determine the amount of the SAP and COP financial assurance requirements on a case-by-case basis. The amount of the financial assurance must be no less than the amount

required to meet all lease obligations, including:

(i) The projected amount of rentals and other payments due the Government over the next 12 months;

(ii) Any past due rentals and other payments;

(iii) Other monetary obligations; and

(iv) The estimated costs of lease decommissioning, as required by subpart I of this part.

(c) You may satisfy the requirement for a COP bond and, if applicable, a SAP bond by increasing the amount of your existing bond or replacing your existing bond.

(d) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of COP bond or, if applicable, SAP bond.

(1) If we propose adjusting your financial assurance amount, we will notify you of the proposed adjustment and give you an opportunity to comment.

(2) We may approve a reduced financial assurance amount if you request it and if the reduced amount that you request continues to be greater than the sum of:

(i) The projected amount of rentals and other payments due the Government over the next 12 months;

(ii) Any past due rentals and other payments;

(iii) Other monetary obligations; and

(iv) The estimated costs of lease decommissioning.

§ 285.518 [Reserved]

§ 285.519 [Reserved]

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

§ 285.520 What financial assurance amount must I provide when I obtain my limited lease, ROW grant or RUE grant?

(a) You must post a minimum limited lease or grant-specific bond in the amount of $300,000.

(b) You meet the financial assurance requirements under this subpart if your designated lease or grant operator provides a minimum limited lease-specific or grant-specific bond in an amount sufficient to guarantee compliance with all terms and conditions of the limited lease or grant.

(1) The MMS may adjust the dollar amount of the minimum, lease-specific or grant-specific bond by the CPI–U or a substantially equivalent index if the CPI–U is discontinued.

(2) The first CPI–U-base adjustment can be made no earlier than the 5-year anniversary of the adoption of this rule. Subsequent CPI–U-based adjustments may be made every 5 years thereafter.

§ 285.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?

(a) The MMS may require you to increase the level of your financial assurance as activities progress on your limited lease or grant. We will base the determination for the amount of financial assurance requirements on our estimate of the cost to meet all accrued lease or grant obligations, including:

(1) The projected amount of rentals and other payments due the Government over the next 12 months;

(2) Any past due rentals and other payments;

(3) Other monetary obligations; and

(4) The estimated costs of lease abandonment and cleanup.

(b) You may satisfy the requirement for increased financial assurance levels for the limited lease or grant by increasing the amount of your existing bond or replacing your existing bond.

§ 285.522 through 285.524 [Reserved]

Requirements for Financial Assurance Instruments

§ 285.525 What general requirements must a financial assurance instrument meet?

(a) Any bond or other acceptable financial assurance instrument that you provide must:

(1) Be payable to MMS upon demand; and

(2) Guarantee compliance of all lessees, operators and grant holders with all terms and conditions of the lease or grant, any subsequent approvals and authorizations, and all applicable regulations.

(b) All bonds and other forms of financial assurance must be on or in a form approved by MMS. You may submit this on an approved form that you have reproduced or generated by use of a computer. If the document you submit omits any terms and conditions that are included on the MMS-approved form, your bond is deemed to contain the omitted terms and conditions.

(c) Surety bonds must be issued by an approved surety listed in the current Treasury Circular 570, as required by 31 CFR 223.16. You may obtain one copy of Circular 570 from the Treasury Web site at *http://www.fms.treas.gov/c570/*.

(d) Your surety bond cannot exceed the underwriting limit listed in the current Treasury Circular 570, except as permitted therein.

(e) You and a qualified surety must execute your bond. When the surety is a corporation, an authorized corporate officer must sign the bond and attest to it over the corporate seal.

(f) You may not terminate the period of liability of your bond or cancel your bond, except as provided in this subpart. Bonds must continue in full force and effect even though an event has occurred that could diminish, terminate, or cancel a surety's obligation under State law.

(g) Your surety must notify you and MMS within 5 business days after:

(1) It initiates any judicial or administrative proceeding alleging its insolvency or bankruptcy, or

(2) The Treasury decertifies the surety.

§ 285.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?

(a) You may use other types of security instruments, if MMS determines that such security protects MMS to the same extent as the surety bond. MMS will accept pledges of the following:

(1) U.S. Department of Treasury securities identified in 31 CFR part 225;

(2) Cash in an amount equal to the required dollar amount of the financial assurance, to be deposited and maintained in a Federal depository account of the United States Treasury by MMS; and

(3) Certificates of deposit or savings accounts in a bank or financial institution organized or authorized to transact business in the United States with:

(i) Minimum net assets of $500,000,000; and

(ii) Minimum Bankrate.com Safe & Sound rating of 3 Stars and Capitalization, Assets, Equity and Liquidity (CAEL) of 3 or less.

(b) If you use a Treasury security:

(1) You must post one hundred fifteen (115) percent of your financial assurance amount.

(2) You must monitor the collateral value of your security. If the collateral value of your security as determined in accordance with the 31 CFR part 203 Collateral Margins Table (which can be found at *http://www.treasurydirect.gov*) falls below the required level of coverage, you must pledge additional security to provide the required amount.

(3) You must include with your pledge authority for us to sell the security and use the proceeds if we determine that you have failed to comply with any of the terms and conditions of your lease or grant, any subsequent approval or authorization, or applicable regulations.

§ 285.527 Can I use a lease or grant-specific decommissioning account to meet the financial assurance requirements?

(a) In lieu of a surety bond, MMS may authorize you to establish a lease, ROW

grant, or RUE grant-specific decommissioning account in a federally insured institution. The funds may not be withdrawn from the account without our written approval.

(1) The funds must be payable to MMS and pledged to meet your lease or grant decommissioning and site clearance obligations.

(2) You must fully fund the account within the time MMS prescribes to cover all costs of decommissioning including site clearance. The MMS will estimate the cost of decommissioning, including site clearance.

(b) Any interest paid on the account will be treated as account funds unless we authorize in writing that any interest be paid to the depositor.

(c) We may allow you to pledge Treasury securities payable to MMS on demand to satisfy your obligation to make payments into the account. Acceptable Treasury securities and their collateral value are determined in accordance with the 31 CFR part 203 Collateral Margins Table (which can be found at *http://www.treasurydirect.gov*).

(d) We may require you to commit a specified stream of revenues as payment into the account so that the account will be fully funded as prescribed in paragraph (a)(2). The commitment may include revenue from another lease, ROW grant, or RUE grant issued under this part.

§ 285.528 [Reserved]

§ 285.529 [Reserved]

Changes in Financial Assurance

§ 285.530 What must I do if my financial assurance lapses?

(a) If your surety is decertified by the Treasury, becomes bankrupt or insolvent, or if your surety's charter or license is suspended or revoked, or if any other approved security expires for any reason, you must:

(1) Inform MMS within 3 business days about the financial assurance lapse; and

(2) Provide new financial assurance to MMS in the amount set by MMS as provided in this subpart.

(b) You must notify MMS within 3 business days after you learn of any action filed alleging that you are, or your surety is, insolvent or bankrupt.

§ 285.531 What happens if the value of my financial assurance is reduced?

If the value of your financial assurance is reduced below the required financial assurance amount, because of a default or any other reason, you must provide additional financial assurance sufficient to meet the requirements of this subpart within 45 calendar days or within a different period as specified by MMS.

§ 285.532 What happens if my surety wants to terminate the period of liability of my bond?

(a) Terminating the period of liability of a bond ends the period during which surety liability continues to accrue. The surety continues to be responsible for obligations and liabilities that accrued during the period of liability and before the date on which MMS terminates the period of liability under paragraph (b) of this section. The liabilities that accrue during a period of liability include:

(1) Obligations that started to accrue before the beginning of the period of liability and have not been met; and

(2) Obligations that began accruing during the period of liability.

(b) Your surety must submit to MMS its request to terminate the period of liability under its bond and notify you of that request. The MMS will terminate that period of liability within 90 calendar days after MMS receives the request. If you intend to continue activities, or have not met all obligations of your lease or grant, MMS will require you to provide a replacement bond or alternative form of security of equivalent or greater value.

§ 285.533 How does my surety obtain cancellation of my bond?

(a) The MMS will release a bond or allow a surety to cancel a bond, and will relieve the surety from accrued obligations only if:

(1) The MMS determines that there are no outstanding obligations covered by the bond; or

(2)(i) The MMS accepts a replacement bond or an alternative form of security in an amount equal to or greater than the bond to be cancelled to cover the terminated period of liability;

(ii) The surety issuing the new bond has expressly agreed to assume all outstanding liabilities under the original bond that accrued during the period of liability that was terminated; and

(iii) The surety issuing the new bond has agreed to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §§ 285.515, 285.516, 285.520, or 285.521, and of which you were notified.

(b) When your lease or grant ends, your surety(ies) remain(s) responsible and MMS will retain any financial assurance as follows:

(1) The period of liability ends when you cease all operations and activities under the lease or grant, including decommissioning and site clearance.

(2) Your surety or collateral financial assurance will not be released until seven years after the lease ends or a longer period as necessary to complete any appeals or judicial litigation related to your bonded obligation or for MMS to determine that all of your obligations under the lease or grant have been satisfied.

(3) MMS will reduce the amount of your bond or return a portion of your financial assurance if MMS determines that we need less than the full amount of the bond or financial assurance to meet any possible future obligations.

§ 285.534 When may MMS cancel my bond?

When your lease or grant ends, your surety(ies) remain(s) responsible and MMS will retain any pledged security as shown in the following table:

Bond—	The period of liability ends—	Your bond will not be released until—
(a) Bonds for commercial leases submitted under § 285.515.	When MMS determines that you have met all of your obligations under the lease.	Seven years after the lease ends or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations.
(b) SAP or COP bonds submitted under § 285.516.	When MMS determines that you have met all your decommissioning, site clearance and other obligations.	(i) Seven years after the lease ends or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations; and

Bond—	The period of liability ends—	Your bond will not be released until—
		(ii) The MMS determines that the potential liability resulting from any undetected noncompliance is not greater than the amount of the base bond.
(c) Bonds submitted under §§ 285.520 and 285.521 for limited leases, ROW grants or RUE grants.	When MMS determines that you have met all of your obligations under the limited lease or grant.	Seven years after the limited lease or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations.

§ 285.535 Why might MMS call for forfeiture of my bond?

(a) The MMS may call for forfeiture of all or part of the bond or pledged security or other form of guaranty if:

(1) After notice and demand for performance by MMS, you refuse or fail, within the timeframe we prescribe, to comply with any term or condition of your lease or grant, other authorization or approval, or applicable regulations; or

(2) You default on one of the conditions under which we accepted your bond.

(b) We may pursue forfeiture without first making demands for performance against any other lessee, ROW grant holder, RUE grant holder, or other person approved to perform obligations under a lease or grant.

§ 285.536 How will I be notified of a call for forfeiture?

(a) The MMS will notify you and your surety in writing of the call for forfeiture and provide the reasons for the forfeiture and the amount to be forfeited. We will base the amount upon an estimate of the total cost of corrective action to bring your lease or grant into compliance.

(b) We will advise you and your surety that you may avoid forfeiture if, within 10 business days:

(1) You agree to and demonstrate in writing to MMS that you will bring your lease or grant into compliance within the timeframe we prescribe and do so; or

(2) Your surety agrees to and demonstrates that it will bring your lease or grant into compliance within the timeframe we prescribe, even if the cost of compliance exceeds the face amount of the bond.

§ 285.537 How will MMS proceed once my bond or other security is forfeited?

(a) If MMS determines that your bond or other security is forfeited, we will collect the forfeited amount and use the funds to bring your lease or grant(s) into compliance and correct any default.

(b) If the amount collected under your bond or other security is insufficient to pay the full cost of corrective action, MMS may take or direct action to obtain full compliance and recover all costs in excess of the forfeited bond from you or any co-lessee or co-grantee.

(c) If the amount collected under your bond or other security exceeds the full cost of corrective action to bring your lease or grant(s) into compliance, we will return the excess funds to the party from whom the excess was collected.

§ 285.538 [Reserved]

§ 285.539 [Reserved]

Revenue Sharing With States

§ 285.540 How will MMS equitably distribute revenues to States?

(a) The MMS will distribute among all eligible States 27 percent of revenues derived from qualified projects. Those revenues include all revenues derived from the entire qualified project area and are not limited to revenues attributable to the portion of the project area within 3 miles of the seaward boundary of a coastal State.

(b) The MMS will determine and announce the qualified project area at the time it grants or issues a lease, easement, or right-of-way on the OCS for the purpose of a specific project. If a qualified project changes in some way that may affect the equitable distribution of revenues, MMS may re-evaluate the project area to restore the equitable distribution of revenues. If a re-evaluation results in a change in the project area, MMS will re-calculate the geographic center of the project upon which the allocation of revenues is based.

(c) To determine each State's share of the 27 percent of the revenues for a qualified project, MMS will use the inverse distance formula, which apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the project. If S_i is equal to the nearest distance from the geographic center of the project to the i = 1, 2, ... n^{th} eligible State's coastline, then State i would be entitled to the fraction F_i of the 27-percent aggregate revenue share due all the States according to the formula:

$$F_i = (1/S_i) \div (\Sigma_{i = 1...n} (1/S_i)).$$

§ 285.541 How will a qualified project's location affect an eligible State's share of revenues?

(a) For qualified projects, the criteria for determining a State's eligibility and its share of revenues under this part are illustrated in the three examples shown in the following table. The interpretations of the criteria provided in the examples can be applied to the range of other possible situations that are not specifically included in the table.

If the qualified project area extends into the zone within 3 miles seaward of the submerged lands . . .	and the geographic center of the project is . . .	Then . . .
(1) Of only 1 State, ...	Any distance from that State's coastline and farther than 15 miles from the coastline of any other State,	The single eligible State would receive the entire 27 percent of the revenues from the project.
(2) Of only 1 State, ...	Farther than 15 miles from the coastline of that State, within 15 miles of the coastline of a second State, and farther than 15 miles from the coastline of any other State,	The 2 eligible States would share the 27 percent of revenues under the inverse distance formula based on their distance from the geographic center of the project area. The second State would receive a larger share of the revenues.

If the qualified project area extends into the zone within 3 miles seaward of the submerged lands . . .	and the geographic center of the project is . . .	Then . . .
(3) Of 2 States, ...	More than 15 miles from the coastline of one State, within 15 miles of the coastline of the second State, within 15 miles from the coastline of a third State, and farther than 15 miles from the coastline of any other State,	All 3 eligible States would share the 27 percent of revenues under the inverse distance formula based on their distance from the geographic center of the project area. The States closest to the geographic center of the project would receive proportionally higher revenue shares. The second State would not get a larger share for meeting both eligibility criteria, but it would receive a larger share of the revenues than would the first State based on its relative proximity to the geographic center of the project.

(b)(1) The following calculations use the hypothetical situation in paragraph (a)(2) in the table to demonstrate how the inverse distance formula would be used to distribute revenue shares. Assume that the geographic center of the project lies 20 miles from the closest coastline point of State A and 10 miles from the closest coastline point of State B. The MMS will round dollar shares to the nearest whole dollar. The proportional share due each State would be calculated as follows:

(i) State A's share = [(1/20) ÷ (1/20 + 1/10)] = 1/3.

(ii) State B's share = [(1/10) ÷ (1/20 + 1/10)] = 2/3.

(2) Therefore, State B's coastline, being half the distance to the geographic center of the qualified project as State A's coastline, qualifies State B to receive a share that is twice as large as State A's share.

(3) The sharing rate of the total revenues is mandated to be 27 percent under the EPAct. Hence, if the qualified project generates $1,000,000 of Federal revenues in a given year, the Federal Government would distribute the States' 27-percent share as follows:

(i) State A's share = $270,000 × 1/3 = $90,000.

(ii) State B's share = $270,000 × 2/3 = $180,000.

Subpart F—Plans and Information Requirements

§ 285.600 What plans and information must I submit to MMS before I conduct activities on my lease or grant?

You must submit a SAP, COP, or GAP and receive MMS approval as set forth below:

Before you:	You must:
(a) Conduct any site assessment activities on your commercial lease ...	Submit and obtain approval for your Site Assessment Plan (SAP) according to §§ 285.605 through 285.612.
(b) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease.	Submit and obtain approval for your Construction and Operations Plan (COP), according to §§ 285.620 through 285.629.
(c) Conduct any activities on your limited lease, ROW grant, or RUE grant in any OCS area.	Submit and obtain approval for your General Activities Plan (GAP) according to §§ 285.640 through 285.647.

§ 285.601 When am I required to submit my plans to MMS?

Your plan submission requirements depend on whether your lease or grant was issued competitively or noncompetitively under subpart B or subpart C of this part.

(a) If your lease or grant is issued competitively, you must submit your SAP or your GAP within 6 months of issuance.

(b) If you request a lease or grant to be issued noncompetitively, you must submit your SAP or your GAP within 60 calendar days after the Director issues a determination that there is no competitive interest.

(c) If you intend to request an operations term for your commercial lease, you must submit a COP at least 6 months before the end of your site assessment term.

(d) You may submit your COP with your SAP.

(1) You must provide sufficient data and information with your COP for MMS to complete the needed reviews and NEPA analysis.

(2) You may need to revise your COP and MMS may need to conduct additional reviews, including NEPA analysis, if new information becomes available after you complete your site assessment activities.

§ 285.602 What records must I maintain?

Until MMS releases your financial assurance under § 285.533, you must maintain and provide to MMS upon request, all data and information related to compliance with required terms and conditions of your SAP, COP, or GAP.

§ 285.603 [Reserved]

§ 285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

§ 285.605 What is a Site Assessment Plan (SAP)?

(a) A SAP describes the surveys you plan to perform and other activities you propose to conduct for the characterization of your commercial lease, including your project easement. At a minimum, your SAP must describe how you will conduct the following surveys on your lease.

(1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys);

(2) Resource assessment surveys (e.g., meteorological and oceanographic data collection); and

(3) Baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys).

(b) You must receive MMS approval of your SAP before you can begin any activities on your lease as provided in § 285.613.

(c) If you propose to install facilities on the OCS (e.g., single-monopile meteorological towers), you must submit the information required in § 285.610(b), as part of your SAP. If you propose to construct multiple facilities or a facility which MMS determines to be complex or significant, we will require you to submit the additional reports and information required in § 285.614(b) and to nominate a Certified Verification Agent (CVA) as required in § 285.706.

§ 285.606 What must I demonstrate in my SAP?

(a) Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that conforms to your responsibilities listed in § 285.105(a) and:

(1) Conforms to all applicable laws, implementing regulations, lease provisions and stipulations or conditions of your commercial lease;

(2) Is safe;

(3) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(4) Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;

(5) Uses best available and safest technology;

(6) Uses best management practices; and

(7) Uses properly trained personnel.

(b) You must also demonstrate that your site assessment activities will include the necessary surveys and other activities to gather information and data required for your COP, as provided in § 285.625.

§ 285.607 How do I submit my SAP?

You must submit one paper copy and one electronic version of your SAP to MMS at the address listed in § 285.110.

§ 285.608 [Reserved]

§ 285.609 [Reserved]

Contents of the Site Assessment Plan

§ 285.610 What must I include in my SAP?

Your SAP must include the following information, as applicable. We will keep this information confidential to the extent allowed by law.

(a) For all activities you propose to conduct under your SAP, you must provide the following information:

Project information:	Including:
(1) Contact information	The name, address, e-mail address, and phone number of a company authorized representative.
(2) The site assessment concept	A discussion of the objectives; description of the proposed activities, including the technology you will use and any surveys you will conduct; and proposed schedule from start to completion.
(3) Designation of operator, if applicable	As provided in § 285.405.
(4) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A listing of all Federal, State, and local authorizations, or approvals required to conduct site assessment activities on your lease.	A statement indicating whether such authorization or approval has been applied for or obtained.
(6) A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(7) Financial assurance information	Statements attesting that the activities and facilities proposed in your SAP are or will be covered by an appropriate bond or other approved security as required in §§ 285.515 and 285.516.
(8) Other information	Additional information as requested by MMS.

(b) For site assessment activities that include the installation of any facilities (e.g., single monopile meteorological tower) in addition to the information requirements in paragraph (a) of this section, you must provide the following information or a description of how you will acquire the information:

Project information:	Including:
(1) A location plat	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances both located offshore and onshore.
(2) Geotechnical	A description of how you will conduct geotechnical surveys to gather all relevant seabed and engineering data and information to allow for the design of the foundation for that facility. You must provide data and information to depths below which the underlying conditions will not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and in situ tests) as well as laboratory testing of soil samples, but may consist of a minimum of one deep boring with samples.
(3) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(4) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(5) Shallow hazards	A description of how you will conduct the shallow hazards survey to gather information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (ii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(6) Archaeological resources	(i) A description of how you will conduct the archaeological resource survey, if required. (ii) Historic and prehistoric archaeological resources, as required by National Historic Preservation Act of 1966, as amended.

Project information:	Including:
(7) Geological	A description of how you will conduct a geological survey to assess: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(8) Biological	A description of how you will conduct biological surveys to determine the presence of live bottoms, hard bottoms, topographic features and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.
(9) Socio-economic	A description of how you will conduct socio-economic analyses to determine visual impacts, competing uses (e.g., commercial fishing, recreation, tourism, military, oil and gas activities, sand and gravel activities), and other impacts as determined by MMS on a case-by-case basis.
(10) A description of any vessels, offshore vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(11) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart H of this part.
(12) CVA nomination, if required	CVA nominations for reports in subpart G of this part, as required by § 285.706.
(13) Reference information	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to MMS.
(14) Decommissioning and site clearance procedures.	A discussion of methodologies.
(15) Other information	Additional information as requested by MMS.

§ 285.611 What information and certifications must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws?

(a) You must submit with your SAP detailed information to assist MMS in complying with NEPA and other relevant laws. The information must include the resources, conditions, and activities listed in this section that could be affected by or could affect your proposed activities.

(b) You must submit one copy of your consistency certification for CZMA. Your consistency certification must include:

(1) One copy of your consistency certification under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(2) ''Information'' as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2) and ''Analysis'' as required by 15 CFR 930.58(a)(3).

§ 285.612 How will MMS process my SAP?

(a) The MMS will review your submitted SAP, and additional information provided pursuant to § 285.611, to determine if it contains the information necessary to conduct our technical and environmental reviews. We will notify you if your submitted SAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) The MMS will forward one copy of your SAP, consistency certification, and associated data and information under the CZMA to the State's CZM Agency after all information requirements for the SAP are met.

(d) As appropriate, we will coordinate and consult with relevant Federal, State, and local agencies and provide to other Federal, State, and local agencies relevant non-proprietary data and information pertaining to your proposed activities.

(e) During the review process we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your SAP.

(f) Upon completion of our technical and environmental reviews MMS may approve, disapprove, or approve with modifications your SAP.

(1) If we approve your SAP, we will specify terms and conditions to be incorporated into your SAP. You must certify compliance with certain of those terms and conditions as required under § 285.615(c).

(2) If we disapprove your SAP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan addressing the concerns identified and may suspend the term of your lease, as appropriate, to allow this to occur.

Activities Under an Approved SAP

§ 285.613 When may I begin conducting activities under my approved SAP?

After MMS approves your SAP, you may begin conducting the survey activities and any other activities approved in your SAP that do not involve the construction of facilities or any other seabed disturbing activities on the OCS.

§ 285.614 When may I construct OCS facilities proposed under my SAP?

(a) Before you may begin construction of any OCS facility described in your SAP, you must complete the initial survey activities described in § 285.610(b) that relate to the construction and installation of your facility or facilities or to the seabed disturbing activities (*i.e.*, anchoring, coring, etc.), and submit an initial survey report identifying and describing locations where you propose to install facilities and conduct related activities such as coring, anchoring, and mooring. If MMS determines that the facilities are complex or significant, you must also submit the additional information required in paragraph (b) of this section.

(1) You may begin to construct and install your facility or facilities after MMS notifies you that it has received the initial survey report and has no objections. If MMS receives the initial survey report, but does not respond

with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the report and you may commence construction and installation of your facility or facilities.

(2) If MMS has any objections to your initial survey report, we will notify you verbally or in writing within 60 calendar days of receipt. Following initial notification of objections, MMS may follow-up with written correspondence outlining its specific objections to the initial survey report and requesting certain actions necessary to resolve our objections. You cannot begin construction until you resolve any objections to MMS's satisfaction.

(b) If you are constructing multiple facilities or a facility deemed by MMS to be complex or significant as provided in § 285.605(c), you must complete the activities described in § 285.610(b) and submit an initial survey report of the results of those activities to MMS. You also must submit the following before construction may begin:

(1) Facility Design Report described in § 285.701;

(2) Facility Fabrication and Installation Report described in§ 285.702; and

(3) Your Safety Management System described in § 285.810.

§ 285.615 What other reports or notices must I submit to MMS under my approved SAP?

(a) You must notify MMS in writing within 30 calendar days of completing construction and installation activities approved in your SAP.

(b) You must prepare and submit to MMS annually a report that summarizes your site assessment activities and the results of those activities. We will protect the information from public disclosure as provided in § 285.113.

(c) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your SAP that MMS identifies under § 285.612(f)(i). Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.616 [Reserved]

§ 285.617 What activities require a revision to my SAP and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved SAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing SAP or require a revision to your SAP. We may request additional information from you if necessary to make this determination.

(b) The MMS will periodically review the activities conducted under an approved SAP. The frequency and extent of the review will be based on the significance of any changes in available information; and on onshore or offshore conditions affecting, or affected by, the activities conducted under your SAP. If the review indicates that the SAP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your SAP will likely be necessary include:

(1) Activities not described in your approved SAP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Changes in the surface location of a facility or structure;

(4) Addition of a facility or structure not contemplated in your approved SAP;

(5) Changes in the location of your onshore support base from one State to another or to a new base requiring expansion;

(6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision; or

(7) Changes to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision, if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.618 What must I do upon completion of approved site assessment activities?

(a) If, prior to the expiration of your site assessment term, you timely submit a COP meeting the requirements of this subpart that describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that MMS reviews your COP for approval.

(b) You are not required to initiate the decommissioning process for facilities that are authorized to remain in place under your approved COP.

(c) If, following the technical and environmental review of your submitted COP, MMS determines that such facilities may not remain in place, you must initiate the decommissioning process as provided in subpart I of this part.

(d) You must initiate the decommissioning process as set forth in subpart I of this part upon the termination of your lease.

§ 285.619 [Reserved]

Construction and Operations Plan for Commercial Leases

§ 285.620 What is a Construction and Operations Plan (COP)?

The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement.

(a) Your COP must describe all planned facilities that you will construct and use for your project including onshore and support facilities and all anticipated project easements.

(b) Your COP must describe all proposed activities including your proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.

(c) You must receive MMS approval of your COP before you can begin activities on your lease or grant.

§ 285.621 What must I demonstrate in my COP?

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a

manner that conforms to your responsibilities listed in § 285.105(a) and:

(a) Conforms to all applicable laws, implementing regulations, lease provisions and stipulations or conditions of your commercial lease;

(b) Is safe;

(c) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(d) Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

§ 285.622 How do I submit my COP?

(a) You must submit one paper copy and one electronic version of your COP to MMS at the address listed in § 285.110.

(b) You may submit information on any project easement as part of your original COP submission or as a revision to your COP.

§ 285.623 [Reserved]

§ 285.624 [Reserved]

Contents of the Construction and Operations Plan

§ 285.625 What survey activities must I conduct to obtain approval for the proposed site of facilities?

You must conduct the following surveys and submit the results before MMS will approve the proposed site of your facility(ies). The MMS will keep such information confidential to the extent allowed by law. Your COP must include the following information:

Information	Report contents	Including—
(a) Shallow hazards	The results of the shallow hazards survey	Information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (1) Shallow faults; (2) Gas seeps or shallow gas; (3) Slump blocks or slump sediments; (5) Hydrates; or (6) Ice scour of seabed sediments.
(b) Geological survey relevant to the design and siting of your facility.	The results of the geological survey	Assessment of: (1) Seismic activity at your proposed site; (2) Fault zones; (3) The possibility and effects of seabed subsidence; and (4) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(c) Biological	The biological project information	A description of how you conducted biological surveys to determine the presence of live bottoms, hard bottoms, topographic features and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.
(d) Socio-economic	The socio-economic project information	A description of how you conducted socio-economic analyses to determine visual impacts, competing uses (e.g., commercial fishing, recreation, tourism, military, oil and gas activities, sand and gravel activities), and other impacts as determined by MMS on a case-by-case basis.
(e) Geotechnical survey	The results of your sediment testing program, the various field and laboratory test methods employed, and the applicability of these methods as they pertain to the quality of the samples, the type of sediment, and the anticipated design application. You must explain how the engineering properties of each sediment stratum affect the design of your facility. In your explanation you must describe the uncertainties inherent in your overall testing program, and the reliability and applicability of each test method.	(1) A testing program to investigate the stratigraphic and engineering properties of the sediment that may affect the foundations or anchoring systems for your facility. (2) Adequate in situ testing, boring, and sampling at each foundation location, to examine all important sediment and rock strata to determine its strength classification, deformation properties, and dynamic characteristics. (3) At a minimum one deep boring (with soil sampling and testing) at each edge of the project area and within the project area as needed to determine the vertical and lateral variation in seabed conditions and to provide the relevant geotechnical data required for design.
(f) Archaeological resources	A summary that describes the results of the archaeological resource survey.	Historic and prehistoric archaeological resources, as required by National Historic Preservation Act of 1966, as amended.

Information	Report contents	Including—
(g) Overall site investigation	An overall site investigation report for your facility that integrates the findings of your shallow hazards surveys and geologic surveys, and, if required, your subsurface surveys.	An analysis of the potential for: (1) Scouring of the seabed; (2) Hydraulic instability; (3) The occurrence of sand waves; (4) Instability of slopes at the facility location; (5) Liquefaction, or possible reduction of sediment strength due to increased pore pressures; (6) Degradation of subsea permafrost layers; (7) Cyclic loading; (8) Lateral loading; (9) Dynamic loading; (10) Settlements and displacements; (11) Plastic deformation and formation collapse mechanisms; and (12) Sediment reactions on the facility foundations or anchoring systems.

§ 285.626 What must I include in my COP?

Your COP must include the following project-specific information, as applicable. We will keep this information confidential to the extent allowed by law.

Project information	Including—
(a) Contact information	The name, address, e-mail address, and phone number of a company authorized representative.
(b) Designation of operator, if applicable	As provided in § 285.405.
(c) The construction and operation concept	A discussion of the objectives, description of the proposed activities, tentative schedule from start to completion, and plans for phased development as provided in § 285.629.
(d) Commercial lease stipulations and compliance	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(e) A location plat	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances both located offshore and onshore, including all anchor/mooring data.
(f) General structural and project design, fabrication, and installation.	Information for each type of structure associated with your project and, unless MMS provides otherwise, how you will use a CVA to review and verify each stage of the project.
(g) All cables and pipelines, including cables on project easements.	Describe the location, design and installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(h) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(i) A list of solid and liquid wastes generated	Disposal methods and locations.
(j) A listing of chemical products used (if stored volume exceeds USEPA Reportable Quantities).	A list of chemical products used, the volume stored on location, their treatment, discharge, or disposal methods used, and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(k) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(l) A general description of the operating procedures and systems.	(1) Under normal conditions. (2) In the case of accidents or emergencies, including those that are natural or manmade.
(m) Decommissioning and site clearance procedures	A discussion of general concepts and methodologies.
(n) A listing of all Federal, State, and local authorizations, approvals or permits that are required to conduct the proposed activities, including commercial operations.	(1) USCG, USACE, and any other applicable authorizations, approvals, or permits, including any Federal, State or local authorizations pertaining to energy gathering, transmission or distribution (e.g., interconnection authorizations). (2) A statement indicating whether such authorization, approval or permit has been applied for or obtained.
(o) Commercial lease stipulations and compliance	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(p) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart H of this part.
(q) Information you incorporate by reference	A listing of the documents you referenced.

Project information	Including—
(r) A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(s) Reference	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to MMS.
(t) Financial assurance	Statements attesting that the activities and facilities proposed in your COP are or will be covered by an appropriate bond or security as required by §§ 285.515 and 285.516.
(u) CVA nominations for reports required in subpart G of this part.	The information required in § 285.706.
(v) Construction schedule	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations.
(w) Other	Additional information as required by MMS.

§ 285.627 What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws?

(a) You must submit with your COP detailed information to assist MMS in complying with NEPA and other relevant laws. The information must include the resources, conditions, and activities listed in this section, that could be affected by or could affect your proposed activities.

(b) You must submit one copy of your consistency certification. Your consistency certification must include:

(1) One copy of your consistency certification under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(2) ''Information'' as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2) and ''Analysis'' as required by 15 CFR 930.58(a)(3).

(c) You must submit your oil spill response plan as required by part 254 of this subchapter.

(d) You must submit your Safety Management System as required by § 285.810 of this part.

§ 285.628 How will MMS process my COP?

(a) The MMS will review your submitted COP, and the information provided pursuant to § 285.627, to determine if it contains all the required information necessary to conduct our technical and environmental reviews. We will notify you if your submitted COP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) The MMS will forward one copy of your COP, consistency certification, and associated data and information under the CZMA to the State's CZM Agency after all information requirements for the COP are met.

(d) As appropriate, MMS will coordinate and consult with relevant Federal, State, and local agencies and provide to other local, State, and Federal agencies relevant non-proprietary data and information pertaining to your proposed activities.

(e) During the review process we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your COP.

(f) Upon completion of our technical and environmental reviews MMS may approve, disapprove, or approve with modifications your COP.

(1) If we approve your COP, we will specify terms and conditions to be incorporated into your COP. You must certify compliance with certain of those terms and conditions as required under § 285.633(b).

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan addressing the concerns identified and may suspend the term of your lease, as appropriate, to allow this to occur.

(g) If MMS approves your project easement, MMS will issue an addendum to your lease specifying the terms of the project easement. A project easement may include off-lease areas that:

(1) Contain the sites on which cable, pipeline or associated facilities are located;

(2) Do not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a greater width; and

(3) For associated facilities, is limited to the area reasonably necessary for power or pumping stations or other accessory facilities.

§ 285.629 May I develop my lease in phases?

In your COP, you may request development of your commercial lease in phases. In support of your request, you must provide details as to what portions of the lease will be initially developed for commercial operations, and what portions of the lease will be reserved for subsequent phased development.

§ 285.630 [Reserved]

Activities Under an Approved COP

§ 285.631 When must I initiate activities under an approved COP?

After your COP is approved you must commence construction by the date given in the construction schedule required by § 285.626(v), and included as a part of your approved COP, unless MMS approves a deviation from your schedule.

§ 285.632 What documents must I submit before I may construct and install facilities under my approved COP?

(a) You must submit to MMS the documents listed in the following table:

Document	Requirements are found in—
(1) Facility Design Report	§ 285.701
(2) Fabrication and Installation Report	§ 285.702

(b) These activities must fall within the scope of your approved COP. If they do not fall within the scope of your approved COP, you will be required to submit a revision to your COP under § 285.634 for MMS approval before commencing the activity.

§ 285.633 How do I comply with my COP?

(a) Based on MMS's environmental and technical reviews, we will specify terms and conditions to be incorporated into your COP.

(b) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your COP that MMS identifies. Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring and their effectiveness. If you identified measures that were not effective then you must make recommendations for new mitigation measures or monitoring methods.

(c) As provided at § 285.105(i), MMS may require you to submit any supporting data and information.

§ 285.634 What activities require a revision to my COP and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved COP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing COP or require a revision to your COP. We may request additional information from you if necessary to make this determination.

(b) The MMS will periodically review the activities conducted under an approved COP. The frequency and extent of the review will be based on the significance of any changes in available information, and on onshore or offshore conditions affecting, or affected by, the activities conducted under your COP. If the review indicates that the COP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your COP will likely be necessary include:

(1) Activities not described in your approved COP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Change in the surface location of a facility or structure;

(4) Addition of a facility or structure not described in your approved COP;

(5) Changes in the location of your onshore support base from one State to another or to a new base requiring expansion;

(6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision; or

(7) Changes in any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision, if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?

You must notify the MMS within 5-business days, any time you cease commercial operations, without an approved suspension, under your approved COP. If you cease commercial operations for an indefinite period which extends longer than 6 months, we may cancel your lease under § 285.437 and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.636 What notices must I provide MMS following approval of my COP?

You must notify MMS in writing of the following events, within the time periods provided:

(a) No later than 30 calendar days after commencing activities associated with the placement of facilities on the lease area under a Fabrication and Installation Report;

(b) No later than 30 calendar days after completion of construction and installation activities under a Fabrication and Installation Report; and

(c) At least 7 calendar days before commencing commercial operations.

§ 285.637 When may I commence commercial operations on my commercial lease?

You may commence commercial operations 30 calendar days after the CVA has submitted to MMS the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 285.708.

§ 285.638 What must I do upon completion of my commercial operations as approved in my COP?

Upon completion of your approved activities under your COP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provide in §§ 285.905 through 906.

§ 285.639 [Reserved]

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

§ 285.640 What is a General Activities Plan (GAP)?

(a) A GAP describes your proposed activities for the assessment and development of your limited lease or grant including, if applicable, your project easement. Such activities include:

(1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys);

(2) Resource assessment surveys (e.g., meteorological and oceanographic data collection);

(3) Baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys); and

(4) Your construction, activities, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities, that you will construct and use for your project including any project easements.

(b) If you are installing any facilities, you must submit the information required in § 285.645(b), as part of your GAP. If MMS determines that the proposed facilities are complex or significant, or you intend to apply for a project easement, you must submit the information required in §§ 285.645(c) and 285.651(b), with your GAP.

(c) You must receive MMS approval of your GAP before you can begin activities on your lease or grant. For a ROW grant or RUE grant issued competitively, you must submit your GAP within 6 months of issuance.

§ 285.641 What must I demonstrate in my GAP?

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to all applicable laws, implementing regulations, lease provisions and stipulations;

(b) Is safe;

(c) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(d) Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

§ 285.642 How do I submit my GAP?

(a) You must submit one paper copy and one electronic version of your GAP to MMS at the address listed in § 285.110.

(b) If you have a limited lease, you may submit information on any project easement as part of your original GAP submission or as a revision to your GAP.

§ 285.643 [Reserved]

§ 285.644 [Reserved]

Contents of the General Activities Plan

§ 285.645 What must I include in my GAP?

Your GAP must include the following information, as applicable. We will keep this information confidential to the extent allowed by law.

(a) For all activities you propose to conduct under your GAP, you must provide the following information:

Project information	Including—
(1) Contact	The name, address, e-mail address, and phone number of a company authorized representative.
(2) The site assessment concept	A discussion of the objectives; description of the proposed activities, including the technology you will use and any surveys you will conduct; and tentative schedule from start to completion.
(3) Designation of operator, if applicable	As provided in § 285.405.
(4) ROW, RUE or limited lease grant stipulations, if known.	A description of the measures you took or will take to satisfy any or grant stipulation.
(5) A listing of all Federal, State, and local authorizations, approvals, or permits required to conduct activities on your lease or grant.	A statement indicating whether such authorization, approval or permit has been applied for or obtained.
(6) Financial assurance	Statements attesting that the activities and facilities proposed in your GAP are or will be covered by an appropriate bond or other approved security as required in §§ 285.520 and 285.521.
(7) Other	Additional information as requested by MMS.

(b) For activities that include the installation of any facilities (*e.g.*, single monopile meteorological tower, anchored vessels, transmission substations) in addition to the information requirements in paragraph (a) of this section, you must provide the following information or a description of how you will acquire the information:

Project information	Including—
(1) A location plat	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances both located offshore and onshore, including all anchor/mooring data.
(2) Geotechnical	All relevant seabed and engineering data and information to allow for the design of the foundation for that facility. You must provide data and information to depths below which the underlying conditions will not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and in situ tests) as well as laboratory testing of soil samples, but may consist of a minimum of one deep boring with samples.
(3) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(4) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(5) A list of solid and liquid wastes generated	Disposal methods and locations.
(6) A listing of chemical products used (only if stored volume exceeds USEPA Reportable Quantities).	A list of chemical products used, the volume stored on location, their treatment, discharge, or disposal methods used, and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(7) Shallow hazards	A description of how you will conduct the shallow hazards survey to gather information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (ii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(8) Archaeological resources	(i) The results of the archaeological resource survey, if required. (ii) Historic and prehistoric archaeological resources, as required by National Historic Preservation Act of 1966, as amended.
(9) Geological survey relevant to the design and siting of your facility.	A description of how you will conduct a geological survey to assess: (i) Seismic activity at your proposed site; (ii) Fault zones;

Project information	Including—
	(iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(10) Biological	A description of how you will conduct biological surveys to determine the presence of live bottoms, hard bottoms, topographic features and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.
(11) Socio-economic	A description of how you will conduct socio-economic analyses to determine visual impacts, competing uses (e.g., commercial fishing, recreation, tourism, military, oil and gas activities, sand and gravel activities), and other impacts as determined by MMS on a case-by-case basis.
(12) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart H of this part.
(13) A description of any vessels, offshore vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(14) Decommissioning and site clearance procedures.	A discussion of methodologies.
(15) Reference	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to MMS.
(16) Other	Additional information as requested by MMS.

(c) If you are applying for a project easement, or constructing multiple facilities, or a facility deemed by MMS to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section:

Project information	Including—
(1) The construction and operation concept	A discussion of the objectives, description of the proposed activities, and tentative schedule from start to completion.
(2) All cables and pipelines, including cables on project easements.	Describe the location, design and installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(3) A description of the deployment activities	Safety, prevention, and environmental protection features or measures that you will use.
(4) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(5) A list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(6) CVA nominations for reports required in subpart G of this part.	The information required in § 285.706.
(7) Construction schedule	A reasonable schedule of construction activity showing significant milestones leading to the commencement of activities.
(8) Other information	Additional information as required by the MMS.

§ 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?

(a) You must submit with your GAP detailed information to assist MMS in complying with NEPA and other relevant laws. The information must include the resources, conditions, and activities listed in this section, that could be affected by or could affect your proposed activities.

(b) Your consistency certification must include:

(1) One copy of your consistency certification under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(2) ''Information'' as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2) and ''Analysis'' as required by 15 CFR 930.58(a)(3).

§ 285.647 How will MMS process my GAP?

(a) The MMS will review your submitted GAP, along with the information and certifications provided pursuant to § 285.646, to determine if it contains all the required information necessary to conduct our technical and environmental reviews. We will notify you if your submitted GAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) The MMS will forward one copy of your GAP, consistency certification, and associated data and information under the CZMA to the State's CZM Agency, after all information requirements for the GAP are met.

(d) When appropriate, we will coordinate and consult with relevant State and Federal agencies and provide to other local, State and Federal agencies relevant non-proprietary data and information pertaining to your proposed activities.

(e) During the review process we may request additional information, if we

determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your GAP.

(f) Upon completion of our technical and environmental reviews MMS may approve, disapprove, or approve with modifications your GAP.

(1) If we approve your GAP, we will specify terms and conditions to be incorporated into your GAP. You must certify compliance with certain of those terms and conditions as required under § 285.653(b).

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan addressing the concerns identified and may suspend the term of your lease or grant, as appropriate, to allow this to occur.

§ 285.648 [Reserved]

§ 285.649 [Reserved]

Activities Under an Approved GAP

§ 285.650 When may I begin conducting activities under my GAP?

After MMS approves your GAP, you may begin conducting the survey activities and any other activities approved in your GAP that do not involve the construction of facilities on the OCS.

§ 285.651 When may I construct OCS facilities proposed under my GAP?

(a) Before you may begin construction of any OCS facility or any related seabed disturbing activities proposed in your GAP, you must complete the initial survey activities described in § 285.645(b) that relate to the construction and installation of your proposed facility or facilities, or to the seabed disturbing activities (i.e., anchoring, coring, etc.) and submit an initial survey report identifying and describing locations where you propose to install facilities and conduct related activities such as coring, anchoring, and mooring. If MMS determines that the proposed facilities are complex or significant, you must submit the additional information required in § 285.645(c) and paragraph (b) of this section.

(1) You may begin to construct and install your facility or facilities once MMS notifies you that it has received the initial survey report and has no objections. If MMS receives the initial survey report, but does not respond with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the report and you may commence construction and installation of your facility or facilities.

(2) If MMS has any objections to your initial survey report, we will notify you verbally or in writing within 60 calendar days of receipt. Following initial notification of objections, MMS may follow-up with written correspondence outlining its specific objections to the initial survey report and requesting certain actions necessary to resolve the agency's objections. You cannot begin construction until you resolve any objections to MMS's satisfaction.

(b) If you are applying for a project easement, or constructing multiple facilities or a facility deemed by MMS to be complex or significant as provided in § 285.640(b), you must complete the activities described in § 285.645(c). You also must submit the following before construction may begin:

(1) Facility design report required by § 285.701;

(2) Facility fabrication and installation report required by § 285.702; and

(3) Your Safety Management System required by § 285.810.

§ 285.652 How long do I have to conduct activities under an approved GAP?

After MMS approves your GAP, you have:

(a) For a limited lease, 5 years to conduct your approved activities, unless we renew the term under §§ 285.425 through 285.428.

(b) For a ROW grant or RUE grant, the time provided in the terms of the grant.

§ 285.653 What other reports or notices must I submit to MMS, under my approved GAP?

(a) You must notify MMS in writing within 30 calendar days after completing construction and installation activities approved in your GAP.

(b) You must prepare and submit to MMS annually a report that summarizes the findings from any activities you conduct under your approved GAP and the results of those activities. We will protect the information from public disclosure as provided in § 285.113.

(c) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your GAP that MMS identifies under § 285.647(f)(i). Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.654 [Reserved]

§ 285.655 What activities require a revision to my GAP and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved GAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing GAP or require a revision to your GAP. We may request additional information from you if necessary to make this determination.

(b) The MMS will periodically review the activities conducted under an approved GAP. The frequency and extent of the review will be based on the significance of any changes in available information; and on onshore or offshore conditions affecting, or affected by, the activities conducted under your GAP. If the review indicates that the GAP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your GAP will likely be necessary include:

(1) Activities not described in your approved GAP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Changes in the surface location of a facility or structure;

(4) Addition of a facility or structure not contemplated in your approved GAP;

(5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion; or

(6) Change the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision.

(7) Changes to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and any relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.656 What must I do if I cease activities approved in my GAP before the end of my term?

You must notify the MMS any time you cease activities under your approved GAP without an approved suspension. If you cease activities for an indefinite period that exceeds 6 months, MMS may cancel your lease or grant under § 285.437, as applicable, and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.657 What must I do upon completion of approved activities under my GAP?

Upon completion of your approved activities under your GAP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§ 285.905 through 906.

Cable and Pipeline Deviations

§ 285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?

(a) You must make every effort to ensure that all cables and pipelines are constructed in a manner that minimizes deviations from the approved plan under your lease or grant.

(b) If MMS determines that a significant change in conditions has occurred that would necessitate a deviation after issuing the lease or granting a ROW grant or RUE grant but before the commencement of construction of the cable or pipeline on the lease or grant, MMS may suspend the start of construction of the cable or pipeline until MMS modifies the lease or grant.

(c) If, after construction, it is determined that a deviation from the approved plan has occurred, you must:

(1) Notify the operators of all leases (including mineral leases issued under this subchapter) and holders of all ROW grants or RUE grants (including all grants issued under this subchapter) which include the area where a deviation has occurred and provide MMS with evidence of such notification; and

(2) Relinquish any unused portion of your lease or grant; and

(3) Submit a revised plan for MMS approval as necessary.

(d) Construction of a cable or pipeline that substantially deviates from the approved plan may be grounds for cancellation of the lease or grant.

Subpart G—Facility Design, Fabrication, and Installation

Reports

§ 285.700 What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP?

(a) You must submit the following reports to MMS before installing facilities described in your approved COP (as provided in § 285.632(a)) and, when required by this part, your SAP (as provided in § 285.614(b)) or GAP (as provided in § 285.651(b)):

(1) A Facility Design Report; and

(2) A Fabrication and Installation Report.

(b) You may begin to construct and install the approved facilities after MMS notifies you that it has received your reports and has no objections. If MMS receives the reports, but does not respond with objections within 60 calendar days of receipt, MMS is deemed not to have objections to the reports and you may commence construction and installation of your facility or facilities.

(c) If MMS has any objections, we will notify you verbally or in writing within 60 calendar days of receipt of the report. Following initial notification of objections, MMS may follow up with written correspondence outlining its specific objections to the report and requesting certain actions necessary to resolve the agency's objections. You cannot commence activities addressed in such report until you resolve any objections to MMS's satisfaction.

§ 285.701 What must I include in my Facility Design Report?

Your Facility Design Report provides specific details of the design of any facilities, including cables and pipelines, that are outlined in your approved SAP, COP, or GAP. Your Facility Design Report must demonstrate that your design conforms to your responsibilities listed in § 285.105(a). You must include the following items in your Facility Design Report:

Required documents	Required contents	Other requirements
(a) Cover letter	(1) Proposed facility designations; (2) Lease, ROW grant or RUE grant number; (3) Area; name and block numbers; and (4) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(b) Location plat	(1) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; (2) Distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 83 datum plane coordinate system; and (3) The location of any proposed project easement.	Your plat must be drawn to a scale of 1 inch equals 100 feet and include the coordinates of the lease, ROW grant, or RUE grant block boundary lines. You must submit three paper copies.
(c) Front, Side, and Plan View drawings	(1) Facility dimensions and orientation; (2) Elevations relative to Mean Lower Low Water (MLLW); and (3) Pile sizes and penetration.	Your drawing sizes must not exceed 11″ x17″. You must submit three paper copies.

Required documents	Required contents	Other requirements
(d) Complete set of structural drawings	The approved for construction fabrication drawings should be submitted including, e.g.: (1) Cathodic protection systems; (2) Jacket design; (3) Pile foundations; (4) Mooring and tethering systems; (5) Foundations and anchoring systems; and (6) Associated cable and pipeline designs.	Your drawing sizes must not exceed 11″ x 17″. You must submit 1 paper copy.
(e) Summary of environmental data used for design.	A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on: (1) Extreme weather; (2) Seafloor conditions; and (3) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.	You must submit 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP you may reference the plan.
(f) Summary of the engineering design data	(1) Loading information (e.g., live, dead, environmental); (2) structural information (e.g., design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring or tethering systems; fabrication and installation guidelines); (3) Location of foundation boreholes and foundation piles; and (4) Foundation information (e.g., soil stability, design criteria).	You must submit 1 electronic copy.
(g) A complete set of design calculations		You must submit 1 electronic copy.
(h) Project-specific studies used in the facility design or installation.	All studies pertinent to facility design or installation, e.g., oceanographic and soil reports including the results of the surveys required in §§ 285.610(b), 285.626, or 285.645(b).	You must submit 1 electronic copy of each study.
(i) Description of the loads imposed on the facility.	(1) Loads imposed by jacket; ..... (2) Decks; (3) Production components; (4) Foundations, foundation pilings and templates, and anchoring systems; and (5) Mooring or tethering systems.	You must submit 1 electronic copy.
(j) Geotechnical Report	A list of all data from borings and recommended design parameters.	You must submit 1 electronic copy.
(k) Certification statement and location of records as required in § 285.714(c).	The following statement: ''The design of this structure has been certified by a MMS approved Certified Verification Agent to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location).''	An authorized lessee or grantee representative must sign the statement. You must submit 1 paper copy.

§ 285.702 What must I include in my Fabrication and Installation Report?

Your Fabrication and Installation Report must describe how your facilities will be fabricated and installed in accordance with the design criteria identified in the Facility Design Report, your approved SAP, COP, or GAP, and generally accepted industry standards and practices. Your Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to your responsibilities listed in § 285.105(a). You must include the following items in your Fabrication and Installation Report:

Required documents	Required contents	Other requirements
(a) Cover letter	(1) Proposed facility designation, lease, ROW grant, or RUE grant number; (2) Area, name, and block number; and (3) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(b) Schedule	Fabrication and installation	You must submit 1 paper copy and 1 electronic copy.

Required documents	Required contents	Other requirements
(c) Fabrication information	The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report.	You must submit 1 paper copy and 1 electronic copy.
(d) Installation process information	Details associated with the deployment activities, equipment, and materials including onshore and offshore equipment and support, and anchoring and mooring patterns.	You must submit 1 paper copy and 1 electronic copy.
(e) Federal, State, and Local Permits (e.g. EPA, USACE).	Either 1 copy of the permit or information on the status of the application.	You must submit 1 paper copy and 1 electronic copy.
(f) Environmental information	(1) Water discharge; (2) Waste disposal; (3) Vessel information; and (4) Onshore waste receiving treatment, or disposal facilities.	You must submit 1 paper copy and 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP you may reference the plan.
(g) Project easement	Design of any cables, pipelines or facilities. Information on burial methods and vessels.	You must submit 1 hard copy and 1 electronic copy.

§ 285.703 [Reserved]

§ 285.704 [Reserved]

Certified Verification Agent

§ 285.705 What is the function of a Certified Verification Agent (CVA)?

(a) You must use a Certified Verification Agent to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report; and

(2) Ensure that repairs and major modifications are completed in conformance with accepted engineering practices.

(b) The CVA is directly responsible for providing to MMS immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.

§ 285.706 How do I nominate a CVA for MMS approval?

(a) As part of your COP (as provided in § 285.626(u)) and, when required by this part, your SAP (as provided in § 285.610(b)(11)), or GAP (as provided in § 285.645(c)(6)), you must nominate a CVA for MMS approval. You must specify whether the nomination is for the Facility Design Report, Fabrication and Installation Report, Modification and Repair Report, or for any combination of these.

(b) For each CVA that you nominate, you must submit to MMS a list of documents used in your design that you will forward to the CVA and a qualification statement that includes the following:

(1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore energy facilities;

(2) Technical capabilities of the individual or the primary staff for the specific project;

(3) Size and type of organization or corporation;

(4) In-house availability of, or access to, appropriate technology (including computer programs, hardware, and testing materials and equipment);

(5) Ability to perform the CVA functions for the specific project considering current commitments;

(6) Previous experience with MMS requirements and procedures, if any; and

(7) The level of work to be performed by the CVA.

(c) Individuals or organizations acting as CVAs must not function in any capacity that would create a conflict of interest, or the appearance of a conflict of interest.

(d) The verification must be conducted by or under the direct supervision of registered professional engineers.

(e) The MMS will approve or disapprove your CVA as part of its review of the COP or, when required, for your SAP or GAP.

(f) You must nominate a new CVA for MMS approval if the previously approved CVA:

(1) Is no longer able to serve in a CVA capacity for the project; or

(2) No longer meets the requirements for a CVA set forth in this subpart.

§ 285.707 What are the CVA's primary duties for facility design review?

(a) The CVA must use good engineering judgment and practices in conducting an independent assessment of the design of the facility. The CVA must certify in the Facility Design Report to MMS that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location.

(b) The CVA must conduct an independent assessment of all proposed:

(1) Planning criteria;

(2) Operational requirements;

(3) Environmental loading data;

(4) Load determinations;

(5) Stress analyses;

(6) Material designations;

(7) Soil and foundation conditions;

(8) Safety factors; and

(9) Other pertinent parameters of the proposed design.

(c) For any floating facility, the CVA must ensure that the requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity), have been met. The CVA must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.708 What are the CVA's primary duties for fabrication and installation review?

(a) The CVA must do all of the following:

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;

(2) Monitor the fabrication and installation of the facility as required by paragraph (b) of this section;

(3) Make periodic onsite inspections while fabrication is in progress and must verify the items required by § 285.709;

(4) Make periodic onsite inspections while installation is in progress and must satisfy the requirements of § 295.710; and

(5) Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices, your approved COP, SAP, or GAP (as applicable), and the Fabrication and Installation Report.

(i) The report must also identify the location of all records pertaining to fabrication and installation.

(ii) You may commence commercial operations or other approved activities 30 calendar days after MMS receives the certification report, unless MMS notifies you within that time period of its objections to the certification report.

(b) To comply with paragraph (a)(5) of this section, the CVA must monitor the fabrication and installation of the facility to ensure that it has been built and installed according to the Facility Design Report and Fabrication and Installation Report.

(1) If the CVA finds that fabrication and installation procedures are changed or design specifications are modified, the CVA must inform you.

(2) If you accept the modifications, then you must also inform MMS.

§ 285.709 When conducting on-site fabrication inspections, what must the CVA verify?

(a) To comply with § 285.708(a)(3), the CVA must make periodic on-site inspections while fabrication is in progress and must verify the following fabrication items, as appropriate:

(1) Quality control by lessee (or grant holder) and builder;

(2) Fabrication site facilities;

(3) Material quality and identification methods;

(4) Fabrication procedures specified in the Fabrication and Installation Report, and adherence to such procedures;

(5) Welder and welding procedure qualification and identification;

(6) Structural tolerances specified and adherence to those tolerances;

(7) The nondestructive examination requirements, and evaluation results of the specified examinations;

(8) Destructive testing requirements and results;

(9) Repair procedures;

(10) Installation of corrosion-protection systems and splash-zone protection;

(11) Erection procedures to ensure that overstressing of structural members does not occur;

(12) Alignment procedures;

(13) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and

(14) Status of quality-control records at various stages of fabrication.

(b) For any floating facilities, the CVA must ensure that the requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity), have been met. The CVA must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.710 When conducting on-site installation inspections, what must the CVA do?

To comply with § 285.708(a)(4), the CVA must make periodic onsite inspections while installation is in progress and must, as appropriate, verify, witness, survey, or check, the installation items required by this section.

(a) The CVA must verify, as appropriate, all of the following:

(1) Loadout and initial flotation activities;

(2) Towing operations to the specified location, and review the towing records;

(3) Launching and uprighting activities;

(4) Submergence activities;

(5) Pile or anchor installations;

(6) Installation of mooring and tethering systems;

(7) Final deck and component installations; and

(8) Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

(b) For a fixed or floating facility, the CVA must witness all of the following:

(1) The loadout of the jacket, decks, piles, or structures from each fabrication site; and

(2) The actual installation of the facility or major modification and the related installation activities.

(c) For a floating facility, the CVA must witness all of the following:

(1) The loadout of the facility;

(2) The installation of foundation pilings and templates, and anchoring systems; and

(3) The installation of the mooring and tethering systems.

(d) The CVA must conduct an onsite survey of the facility after transportation to the approved location.

(e) The CVA must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

§ 285.711 What reports must the CVA submit for project modifications and repairs?

(a) The CVA must verify and, in a report to us, certify that major repairs and major modifications to the project conform with accepted engineering practices.

(1) A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility.

(2) A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

(b) The report must also identify the location of all records pertaining to the major repairs or major modifications.

§ 285.712 What are the CVA's reporting requirements?

(a) The CVA must prepare and submit to you and MMS all reports required by this subpart. The CVA must also submit interim reports to you and MMS, as requested by the MMS.

(b) For each report required by this subpart, the CVA must submit one electronic copy and one paper copy of each final report to MMS. In each report, the CVA must:

(1) Give details of how, by whom, and when the CVA activities were conducted;

(2) Describe the CVA's activities during the verification process;

(3) Summarize the CVA's findings; and

(4) Provide any additional comments that the CVA deems necessary.

§ 285.713 What must I do after the CVA confirms conformance with the Fabrication and Installation Report on my commercial lease?

After the CVA confirms conformance with the Fabrication and Installation Report, you must notify MMS within 10 business days after commencing commercial operations.

§ 285.714 What records must I keep?

(a) Until MMS releases your financial assurance under § 285.533, you must compile, retain, and make available to MMS representatives, within the time specified by MMS, all of the following:

(1) The as-built drawings;

(2) The design assumptions and analyses;

(3) A summary of the fabrication and installation examination records;

(4) The inspection results from the inspections and assessments required by §§ 285.820 through 285.825; and

(5) Records of repairs not covered in the inspection report submitted under § 285.824(b)(3).

(b) You must record and retain the original material test results of all primary structural materials during all stages of construction until MMS releases your financial assurance under § 285.533. Primary material is material that, should it fail, would lead to a significant reduction in facility safety, structural reliability, or operating capabilities. Items such as steel brackets, deck stiffeners and secondary

braces or beams would not generally be considered primary structural members (or materials).

(c) You must provide MMS with the location of these records in the certification statement as required in §§ 285.701(k), 285.708(a)(5)(i), and 285.711(b).

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments

§ 285.800 How must I conduct my activities to comply with safety and environmental requirements?

(a) You must conduct all activities on your lease or grant under this part in a manner that conforms with your responsibilities in § 285.105(a) and using:

(1) Trained personnel; and

(2) Technologies, precautions, and techniques to minimize the likelihood of harm or damage to human life, the marine environments, including their physical, atmospheric, and biological components.

(b) You must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP as required under §§ 285.615(c), 285.633(b), or 285.653(c).

§ 285.801 What must I do to protect marine mammals, threatened and endangered species, and designated critical habitat?

(a) You must not conduct any activity under your lease or grant that may affect threatened or endangered species or that may affect designated critical habitat of such species until the appropriate level of consultation is conducted as required under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) to ensure that your actions are not likely to jeopardize a threatened or endangered species and are not likely to destroy or adversely modify designated critical habitat.

(b) You must not conduct any activity under your lease or grant that may result in an incidental taking of marine mammals until the appropriate authorization has been issued under the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*).

(c) You must submit plans (SAP, COP, and GAP) to MMS containing sufficient information to ensure that the proposed activities will be conducted in a manner consistent with provisions of the ESA and the MMPA.

(d) If there is reason to believe that a threatened or endangered species may be present while you conduct your MMS approved activities or may be affected by the direct or indirect effects of your actions:

(1) You must notify us that endangered or threatened species may be present in the vicinity of the lease or grant or may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(e) If there is reason to believe that designated critical habitat of a threatened or endangered species may be affected by the direct or indirect effects of your MMS approved activities:

(1) You must notify us that designated critical habitat of a threatened or endangered species in the vicinity of the lease or grant may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(f) If there is reason to believe that marine mammals may be incidentally taken as a result of your proposed activities:

(1) You must agree to secure an authorization from NOAA or the U.S. Fish and Wildlife Service (FWS) for incidental taking, including taking by harassment, that may result from your actions; and

(2) You must comply with all measures required by the NOAA or FWS including measures to effect the least practicable impact on such species and its habitat and ensure no unmitigable adverse impact on availability of the species for subsistence use.

(g) Submit to us:

(1) Measures designed to avoid or minimize adverse effects and any potential incidental take of the endangered or threatened species or marine mammals;

(2) Measures designed to avoid likely adverse modification or destruction of designated critical habitat of such endangered or threatened species; and

(3) Your agreement to monitor for the incidental take of the species and adverse effects on the critical habitat and provide the results of the monitoring to MMS as required; and,

(4) Your agreement to perform any relevant terms and conditions of the Incidental Take Statement that may result from the ESA consultation.

(5) Your agreement to perform any relevant mitigation measures under a MMPA incidental take authorization.

§ 285.802 How must I protect archaeological resources?

(a) When you prepare your SAP, COP, GAP, or decommissioning application, you must consult with MMS about archaeological resources.

(1) If an archaeological resource is known to exist or if we have reason to believe that an archaeological resource may exist in the area of a proposed lease or grant, you must include an archaeological report with your SAP, COP, GAP, or decommissioning application. If you are uncertain of the archaeological survey requirements for your proposed lease or grant, you must consult with the MMS Federal Preservation Officer.

(2) We will specify the survey methods and instrumentation for conducting the archaeological survey and specify the issues to be addressed in the archaeological report.

(b) If the MMS review of your archaeological report included with your SAP, COP, GAP, or decommissioning application concludes that an archaeological resource may be present, we will determine a minimum distance that you must maintain between your activity and the resource, and you must either:

(1) Locate all proposed seafloor-disturbing activities in such a way to avoid the potential archaeological resource by no less than the distance we determine; or

(2) Establish to our satisfaction that an archaeological resource is either unlikely to be present or, if present, that your proposed seafloor disturbing activities have been designed to minimize adverse affects on such resource.

(c) In making a determination under paragraph (b) of this section, we may require you to conduct further archaeological investigations, using personnel, equipment, and techniques we consider appropriate. You must submit the investigation report to us for review. We will notify you if our review of your report determines that an archaeological resource exists and may be adversely affected by your proposed seafloor-disturbing activities.

§ 285.803 What must I do if I discover a potential archaeological resource?

(a) If you, your subcontractors, or any agent acting on your behalf, discover a potential archaeological resource while conducting surveys, construction activities, or any other activity related to your project, you must:

(1) Immediately halt all seafloor-disturbing activities within the area of the discovery;

(2) Notify MMS of the discovery within 72 hours; and

(3) Keep the location of the discovery confidential and not take any action that may adversely affect the archaeological

resource until we have made an evaluation and instructed you how to proceed.

(b) We may require you to conduct additional investigations to determine if the resource is eligible for listing on the National Register of Historic Places under 36 CFR 60.4. We will do this if either:

(1) The site has been impacted by your project activities; or

(2) Impacts to the site or to the area of potential effect cannot be avoided.

(c) If investigations under paragraph (b) of this section indicate that the resource is potentially eligible for the National Register of Historic Places, we will tell you how to protect the resource, or how to mitigate adverse effects to the site.

(d) If we incur costs in protecting the resource, under section 110(g) of the National Historic Preservation Act, we may charge you reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

§ 285.804 How must I protect essential fish habitats identified and described under MSA?

(a) If MMS finds essential fish habitat or habitat areas of particular concern may be adversely affected by the proposed action, MMS must consult with NMFS.

(b) Any conservation recommendations adopted by MMS to avoid or minimize adverse affects on EFH will be incorporated as terms and conditions in the lease and must be adhered to by the applicant. The MMS may require additional surveys to define boundaries and avoidance distances.

(c) If required, MMS will specify the survey methods and instrumentations for conducting the biological survey and specify the contents of the biological report.

§ 285.805 [Reserved]

§ 285.806 [Reserved]

Air Quality

§ 285.807 What requirements must I meet regarding air quality?

(a) You must comply with the Clean Air Act (42 U.S.C. 7409) and its implementing regulations, according to the following table.

If your project is located . . .	You must . . .
(1) In the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico).	Provide to MMS any information required to make the appropriate air quality determinations for your project.
(2) Anywhere else on the OCS	Follow the appropriate implementing regulations as promulgated by the U.S. Environmental Protection Agency under 40 CFR part 55.

(b) For air quality modeling you perform in support of the activities proposed in your plans, you should contact the jurisdictional agency to establish a modeling protocol to ensure that the agency's needs are met and that the meteorological files used are acceptable before initiating the modeling work. In addition, in the western Gulf of Mexico (west of 87.5° west longitude) you must submit to MMS three copies of the modeling report and three sets of digital files as supporting information. The digital files must contain the formatted meteorological files used in the modeling runs, the model input file and the model output file.

§ 285.808 [Reserved]

§ 285.809 [Reserved]

Safety Management Systems

§ 285.810 What must I include in my Safety Management System?

You must submit a description of the Safety Management System you will use with your COP (provided under § 285.627(d)) and, when required by this part, your SAP (as provided in § 285.614(b)(3)) or GAP (as provided in § 285.651(b)(3)). You must describe:

(a) How you will ensure the safety of personnel or anyone on or near your facilities;

(b) Remote monitoring, control, and shut down capabilities;

(c) Emergency response procedures;

(d) Fire suppression equipment, if needed;

(e) How and when you will test your Safety Management System; and

(f) How you will ensure personnel who operate your facilities are properly trained.

§ 285.811 [Reserved]

§ 285.812 [Reserved]

Maintenance and Shutdowns

§ 285.813 When do I have to report removing equipment from service?

(a) The removal of any equipment from service may result in MMS applying remedies as provided in this part, when such equipment is necessary for implementing your approved plan. Such remedies may include an order from MMS requiring you to remove such equipment or facilities from the lease.

(b) For safety equipment:

(1) You must report within 24 hours when any required safety equipment is taken out of service for more than 12 hours. If you provide an oral notification, you must submit a written confirmation of this notice within 3 business days as required by § 285.105(c).

(2) If you remove any required safety equipment from service for greater than 60 calendar days you must submit written confirmation to MMS.

(3) You must notify MMS when you return the safety equipment to service

§ 285.814 [Reserved]

Equipment Failure and Adverse Environmental Effects

§ 285.815 What must I do if I have facility damage or an equipment failure?

(a) If you have facility damage or the failure of a pipeline, cable, or other equipment necessary for you to implement your approved plan, you must make repairs as soon as practicable.

(b) You must notify MMS, as soon as practicable, but no later than 3 business days, of the repair of any pipeline, cable, equipment, or facility associated with your lease or grant. The initial notice can be oral or written.

(c) The MMS may require that you analyze cable, pipeline, or facility failures or damage to determine the cause. If requested by MMS, you must submit a comprehensive written report of the failure or damage to MMS as soon as available.

§ 285.816 What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility?

If environmental or other conditions adversely affect a cable, pipeline, or facility so as to endanger the safety or the environment, you must:

(a) Submit a plan of corrective action to MMS within 30 calendar days of the discovery of the adverse effect;

(b) Take remedial action as described in your corrective action plan; and

(c) Submit to the MMS a report of the remedial action taken within 30 calendar days after completion.

§ 285.817 through 285.819 [Reserved]

Inspections and Assessments

§ 285.820 Will MMS conduct inspections?

The MMS will inspect OCS facilities and any vessels engaged in activities authorized under this part. We conduct these inspections:

(a) To verify that you are conducting activities in compliance with subsection 8(p) of the OCS Lands Act, the regulations in this part, the terms, conditions and stipulations of your lease or grant, approved plans, and other applicable laws and regulations; and

(b) To determine whether proper safety equipment has been installed and is operating properly according to your Safety Management System, as required in § 285.810.

§ 285.821 Will MMS conduct scheduled and unscheduled inspections?

The MMS will conduct both scheduled and unscheduled inspections.

§ 285.822 What must I do when MMS conducts an inspection?

(a) When MMS conducts an inspection, you must:

(1) Provide access to all facilities on your lease (including your project easement), or grant; and

(2) You must make the following available for MMS to inspect:

(i) The area covered under a lease, ROW grant, or RUE grant;

(ii) All improvements, structures, and fixtures on these areas; and

(iii) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

(b) You must retain these records in paragraph (a)(2)(iii) of this section until MMS releases your financial assurance under § 285.533 and provide them to MMS upon request, within the time period specified by MMS.

(c) You must demonstrate to the inspector how you are in compliance with your safety management system.

§ 285.823 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for our representatives while they inspect lease or grant facilities and associated activities. You must send us your reimbursement request within 90 calendar days of the inspection.

§ 285.824 How must I conduct self-inspections?

(a) You must develop a comprehensive annual self-inspection plan covering all of your facilities. You must keep this plan wherever you keep your records and make it available to MMS inspectors upon request. Your plan must specify:

(1) The type, extent, and frequency of in-place inspections that you will conduct for both the above-water and the below-water structure of all facilities and pertinent components of the mooring systems for any floating facilities; and

(2) How you are monitoring the corrosion protection for both the above-water and below-water structure.

(b) You must submit a report annually no later than November 1 to us that must include:

(1) A list of facilities inspected in the preceding 12 months;

(2) The type of inspection employed, (*i.e.*, visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.

§ 285.825 When must I assess my facilities?

(a) You must perform an assessment of the structure, when needed, based on the platform assessment initiators listed in sections 17.2.1–17.2.5 of API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design (incorporated by reference as specified in § 285.115).

(b) You must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD.

(c) You must perform other assessments as required by MMS.

§ 285.826 through 285.829 [Reserved]

Incident Reporting and Investigation

§ 285.830 What are my incident reporting requirements?

(a) You must report all incidents listed in § 285.831 to MMS, according to the reporting requirements for these incidents in §§ 285.832 and 285.833.

(b) These reporting requirements apply to incidents that occur on the area covered by your lease or grant under this part and that are related to activities resulting from the exercise of your rights under your lease or grant under this part.

(c) Nothing in this subpart relieves you from making notices and reports of incidents that may be required by other regulatory agencies.

(d) You must report all spills of oil or other liquid pollutants in accordance with 30 CFR 254.46.

§ 285.831 What incidents must I report and when must I report them?

(a) You must report the following incidents to us immediately via oral communication, and provide a written follow-up report (paper copy or electronically transmitted) within 15 business days after the incident:

(1) Fatalities;

(2) Incidents that require the evacuation of person(s) from the facility to shore or to another offshore facility;

(3) Fires and explosions;

(4) Collisions that result in property or equipment damage greater than $25,000 (Collision means the act of a moving vessel (including an aircraft) striking another vessel, or striking a stationary vessel or object. ''Property or equipment damage'' means the cost of labor and material to restore all affected items to their condition before the damage, including, but not limited to, the OCS facility, a vessel, helicopter, or equipment. It does not include the cost of salvage, cleaning, dry docking, or demurrage.);

(5) Incidents involving structural damage to an OCS facility (Structural damage means damage severe enough so that activities on the facility cannot continue until repairs are made.);

(6) Incidents involving crane or personnel/material handling activities, if they result in a fatality, injury, structural damage, or significant environmental damage;

(7) Incidents that damage or disable safety systems or equipment (including firefighting systems);

(8) Other incidents resulting in property or equipment damage greater than $25,000; and

(9) Any other incidents involving significant environmental damage, or harm.

(b) You must provide a written report of the following incidents to us within 15 calendar days after the incident:

(1) Any injuries that result in one or more days away from work or one or more days on restricted work or job transfer (One or more days means the injured person was not able to return to work or to all of their normal duties the day after the injury occurred.); and

(2) All incidents that require personnel on the facility to muster for evacuation for reasons not related to weather or drills.

§ 285.832 How do I report incidents requiring immediate notification?

For an incident requiring immediate notification under § 285.831(a), you

must notify MMS orally immediately after aiding the injured and stabilizing the situation. Your oral communication must provide the following information:

(a) Date and time of occurrence;

(b) Identification and contact information for the lessee, grant holder, or operator;

(c) Contractor, and contractor representative's name and telephone number (if a contractor is involved in the incident or injury/fatality);

(d) Lease number, OCS area, and block;

(e) Platform/facility name and number, or cable or pipeline segment number;

(f) Type of incident or injury/fatality;

(g) Activity at time of incident; and

(h) Description of the incident, damage, or injury/fatality.

§ 285.833 What are the reporting requirements for incidents requiring written notification?

(a) For any incident covered under § 285.831, you must submit a written report within 15 calendar days after the incident to MMS. The report must contain the following information:

(1) Date and time of occurrence;

(2) Identification and contact information for each lessee, grant holder, or operator;

(3) Name and telephone number of the contractor and the contractor's representative, if a contractor is involved in the incident or injury;

(4) Lease number, OCS area, and block;

(5) Platform/facility name and number, or cable or pipeline segment number;

(6) Type of incident or injury;

(7) Activity at time of incident;

(8) Description of incident, damage, or injury (including days away from work, restricted work or job transfer), and any corrective action taken; and

(9) Property or equipment damage estimate (in U.S. dollars).

(b) You may submit a report or form prepared for another agency in lieu of the written report required by paragraph (a) of this section, if the report or form contains all required information.

(c) The MMS may require you to submit additional information about an incident on a case-by-case basis.

Subpart I—Decommissioning

Decommissioning Obligations and Requirements

§ 285.900 Who must meet the decommissioning obligations in this subpart?

(a) Lessees are jointly and severally responsible for meeting decommissioning obligations for facilities on their leases, including all obstructions, as the obligations accrue and until each obligation is met.

(b) Grant holders are jointly and severally liable for meeting decommissioning obligations for facilities on their grant, including all obstructions, as the obligations accrue and until each obligation is met.

§ 285.901 When do I accrue decommissioning obligations?

You accrue decommissioning obligations when you are or become a lessee or grant holder, and you either install, construct, or acquire by an MMS-approved assignment, a facility, cable, or pipeline, or you create an obstruction to other users of the OCS.

§ 285.902 What are the general requirements for decommissioning?

(a) Except as otherwise authorized by MMS under § 285.909, within 1 year following termination of a lease or grant, you must:

(1) Remove or decommission all facilities, projects, cables, pipelines, and obstructions;

(2) Clear the seafloor of all obstructions created by activities on your lease, including your project easement, or grant, as required by the MMS.

(b) Before decommissioning, you must submit a decommissioning application and receive approval from the MMS.

(c) The approval of the decommissioning concept in the SAP, COP, or GAP is not an approval of a decommissioning application. However, you may submit your complete decommissioning application simultaneously with the SAP, COP, or GAP, so that it may undergo appropriate technical and regulatory reviews at that time.

(d) Following approval of your decommissioning application, you must submit a decommissioning notice under § 285.908 to MMS at least 60 calendar days before commencing decommissioning activities.

(e) If you, your subcontractors, or any agent acting on your behalf discover any archaeological resource while conducting decommissioning activities you must immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to us within 72 hours. We will inform you how to conduct investigations to determine if the resource is significant and how to protect it. You, your subcontractors, or any agent acting on your behalf must keep the location of the discovery confidential and must not take any action that may adversely affect the archaeological resource until we have made an evaluation and told you how to proceed.

§ 285.903 [Reserved]

§ 285.904 [Reserved]

Decommissioning Applications

§ 285.905 When must I submit my decommissioning application?

You must submit your decommissioning application upon the earliest of the following dates:

(a) 2 years before the expiration of your lease;

(b) 90 calendar days after completion of your commercial activities on a commercial lease;

(c) 90 calendar days after completion of your approved activities under a limited lease on a ROW grant or RUE grant; or

(d) 90 calendar days after cancellation, relinquishment, or other termination of your lease or grant.

§ 285.906 What must my decommissioning application include?

You must provide one paper copy and one electronic copy of the application. Include the following information in the application, as applicable.

(a) Identification of the applicant including:

(1) Lease operator, ROW grant holder, or RUE grant holder;

(2) Address;

(3) Contact person and telephone number; and

(4) Shore base.

(b) Identification and description of the facilities, cables, or pipelines you plan to remove or propose to leave in place as provided in § 285.909.

(c) A proposed decommissioning schedule for your lease, ROW grant, or RUE grant including the expiration or relinquishment date and proposed month and year of removal.

(d) A description of the removal methods and procedures, including the types of equipment, vessels, and moorings (*i.e.*, anchors, chains, lines, etc.) you will use.

(e) A description of your site clearance activities.

(f) Your plans for transportation and disposal (including as an artificial reef) or salvage of the removed facilities, cables, or pipelines and any required approvals.

(g) A description of those resources, conditions, and activities that could be affected by or could affect your proposed decommissioning activities. The description must be as detailed as necessary to assist MMS in complying with the NEPA and other relevant Federal laws.

(h) The results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site.

(i) Mitigation measures you will use to protect archaeological and sensitive biological features during removal activities.

(j) A statement whether or not you will use divers to survey the area after removal to determine any effects on marine life.

§ 285.907 How will MMS process my decommissioning application?

(a) Based upon your inclusion of all the information required by § 285.906, MMS will compare your decommissioning application with the decommissioning general concept in your approved SAP, COP, or GAP to determine what technical and environmental reviews are needed.

(b) You will likely have to revise your SAP, COP, or GAP, and MMS will begin the appropriate NEPA analysis and other regulatory reviews as required, if MMS determines that your decommissioning application would:

(1) Result in a significant change in the impacts previously identified and evaluated in your SAP, COP, or GAP;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated in your SAP, COP, or GAP.

(c) During the review process we may request additional information, if we determine that the information provided is not sufficient to complete the review and approval process.

(d) Upon completion of the technical and environmental reviews we may approve, approve with conditions, or disapprove your decommissioning application.

(e) If MMS disapproves your decommissioning application, you must resubmit your application to address the concerns identified by MMS.

§ 285.908 What must I include in my decommissioning notice?

(a) The decommissioning notice is distinct from your decommissioning application and may only be submitted following approval of your decommissioning application as described in §§ 285.905 through 285.907. You must submit a decommissioning notice at least 60 calendar days before you plan to begin decommissioning activities.

(b) Your decommissioning notice must include:

(1) A description of any changes to the approved removal methods and procedures in your approved decommissioning application, including changes to the types of vessels and equipment you will use; and

(2) An updated decommissioning schedule.

(c) We will review your decommissioning notice and may require you to resubmit a decommissioning application if MMS determines that your decommissioning activities would:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated.

Facility Removal

§ 285.909 When may MMS authorize facilities to remain in place following termination of a lease or grant?

(a) In your decommissioning application, you may request that certain facilities authorized in your lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws.

(b) The MMS may approve such requests on a case-by-case basis considering the following:

(1) Potential impacts to the marine environment;

(2) Competing uses of the OCS;

(3) Impacts on marine safety and national defense;

(4) Maintenance of adequate financial assurance; and

(5) Other factors determined by the Director.

(c) Except as provided in paragraph (d) of this section, if MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances.

(d) In your decommissioning application, you may request that certain facilities authorized in your lease or grant be converted to an artificial reef or otherwise toppled in place. The MMS will evaluate all such requests as provided in § 250.1730 of this subchapter.

§ 285.910 What must I do when I remove my facility?

(a) You must remove all facilities to a depth of 15 feet below the mudline, unless otherwise authorized by MMS.

(b) Within 60 days after you remove a facility, you must verify to MMS that you have cleared the site.

§ 285.911 [Reserved]

Decommissioning Report

§ 285.912 After I remove a facility, cable, or pipeline, what information must I submit?

Within 60 calendar days after you remove a facility, cable, or pipeline, you must submit a written report to MMS that includes the following:

(a) A summary of the removal activities including the date they were completed;

(b) A description of any mitigation measures you took; and

(c) If you used explosives, a statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the facility were consistent with those in the approved decommissioning application.

Compliance With an Approved Decommissioning Application

§ 285.913 What happens if I fail to comply with my approved decommissioning application?

If you fail to comply with your approved decommissioning plan or application:

(a) The MMS may call for the forfeiture of your bond or other financial assurance;

(b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure;

(c) The MMS may take enforcement action under § 285.400.

Subpart J—Rights of Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities

Regulated Activities

§ 285.1000 What activities does this subpart regulate?

(a) This subpart provides the general provisions for authorizing and regulating activities that use (or propose to use) an existing OCS facility for energy or marine-related purposes, that are not otherwise authorized under any other part of this subchapter or any other applicable Federal statute. Activities authorized under any other part of this subchapter or under any other Federal law, that use (or propose to use) an existing OCS facility are not subject to this subpart.

(b) The MMS will issue an alternate use right-of-use and easement (Alternate Use RUE) for activities authorized under this subpart.

(c) At the discretion of the Director, an Alternate Use RUE may:

(1) Permit alternate use activities to occur at an existing facility that is

currently in use under an approved OCS lease; or

(2) Limit alternate use activities at the existing facility until after previously authorized activities at the facility have ceased and the OCS lease terminates.

§ 285.1001 through 285.1003 [Reserved]

Requesting an Alternate Use RUE

§ 285.1004 What must I do before I request an Alternate Use RUE?

If you are not the owner of the existing facility on the OCS and the lessee of the area in which the facility is located, you must contact the lessee and owner of the facility and reach preliminary agreement as to the proposed activity for the use of the existing facility.

§ 285.1005 How do I request an Alternate Use RUE?

To request an Alternate Use RUE, you must submit to MMS all of the following:

(a) A summary of the proposed activities for the use of an existing OCS facility, including:

(1) The type of activities that would involve the use of the existing OCS facility;

(2) A description of the existing OCS facility, including a map providing its location on the lease block;

(3) The names of the owners of the existing OCS facility, the operator, the lessee, and any owner of operating rights on the lease at which the facility is located;

(4) A description of additional structures or equipment that will be required to be located on or in the vicinity of the existing OCS facility in connection with the proposed activities;

(5) A statement indicating whether any of the proposed activities are intended to occur before existing activities on the OCS facility have ceased; and

(6) A statement describing how existing activities at the OCS facility will be affected, if proposed activities are to occur at the same time as existing activities at the OCS facility.

(b) A statement affirming that the proposed activities sought to be approved under this subpart are not otherwise authorized by other provisions in this subchapter or any other Federal law;

(c) Evidence that you meet the requirements of § 285.106 as required by § 285.107.

(d) Any request for an Alternate Use RUE must include the signatures of the applicant, the owner of the existing OCS facility, and the lessee of the area in which the existing facility is located.

§ 285.1006 How will MMS decide whether to issue an Alternate Use RUE?

(a) We will consider requests for an Alternate Use RUE on a case-by-case basis. In considering such requests, we will consult with relevant Federal agencies and evaluate whether the proposed activities involving the use of an existing OCS facility can be conducted in a manner that:

(1) Ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable;

(2) Does not inhibit or restrain orderly development of OCS mineral or energy resources; and

(3) Avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance);

(4) Is otherwise consistent with subsection 8(p) of the OCS Lands Act; and

(5) MMS can effectively regulate.

(b) Based on the evaluation that we perform under paragraph (a) of this section, the MMS may authorize, reject, or authorize with modifications or stipulations, the proposed activity.

§ 285.1007 What process will MMS use for competitively offering an Alternate Use RUE?

(a) An Alternate Use RUE must be issued on a competitive basis unless MMS determines after public notice of the proposed Alternate Use RUE that there is no competitive interest.

(b) We will issue a public notice in the **Federal Register** to determine if there is competitive interest in using the proposed facility for alternate use activities. The MMS will specify a time period for members of the public to express competitive interest.

(c) If we receive indications of competitive interest within the published time frame, we will proceed with a competitive offering. As part of such competitive offering, each competing applicant must submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease or grant on the OCS as required in §§ 285.106 and 285.107 by a date we specify. We may request additional information from competing applicants as necessary to adequately evaluate the competing proposals.

(d) We will evaluate all competing proposals to determine whether:

(1) The proposed activities are compatible with existing activities at the facility; and

(2) We have the expertise and resources available to regulate the activities effectively.

(e) We will evaluate all proposals under the requirements of NEPA, CZMA, and other applicable laws.

(f) Following our evaluation, we will select one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, notify the competing applicants, and submit each acceptable proposal to the lessee and owner of the existing OCS facility. If the lessee and owner of the facility agree to accept a proposal, we will proceed to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals that we deem acceptable, we will not issue an Alternate Use RUE.

§ 285.1008 [Reserved]

§ 285.1009 [Reserved]

Alternate Use RUE Administration

§ 285.1010 How long may I conduct activities under an Alternate Use RUE?

(a) We will establish on a case-by-case basis, and set forth in the Alternate Use RUE, the length of time for which you are authorized to conduct activities approved in your Alternate Use RUE instrument.

(b) In establishing this term, MMS will consider the size and scale of the proposed alternate use activities, the type of alternate use activities, and any other relevant considerations.

(c) The MMS may authorize renewal of Alternate Use RUEs at its discretion.

§ 285.1011 What payments are required for an Alternate Use RUE?

We will establish rental or other payments for an Alternate Use RUE on a case-by-case basis as set forth in the Alternate Use RUE instrument, depending on our assessment of the following factors:

(a) The effect on the original OCS Lands Act approved activity;

(b) The size and scale of the proposed alternate use activities;

(c) The income, if any, expected to be generated from the proposed alternate use activities; and

(d) The type of alternate use activities.

§ 285.1012 What financial assurance is required for Alternate Use RUE?

(a) The holder of an Alternate Use RUE will be required to secure financial assurances in an amount determined by MMS that is sufficient to cover all obligations, under the Alternate Use RUE, including decommissioning

obligations, and must retain such financial assurance amounts until all obligations have been fulfilled as determined by MMS.

(b) We may revise financial assurance amounts as necessary to ensure that there is sufficient financial assurance to secure all obligations under the Alternate Use RUE.

(c) We may reduce the amount of the financial assurance that you must retain if it is not necessary to cover existing obligations under the Alternate Use RUE.

§ 285.1013 Is an Alternate Use RUE assignable?

(a) The MMS may authorize assignment of an Alternate Use RUE.

(b) To request assignment of an Alternate Use RUE, you must submit a written request for assignment that includes the following information:

(1) The MMS-assigned Alternate Use RUE number;

(2) The names of both the assignor and the assignee, if applicable;

(3) The names and telephone numbers of the contacts for both the assignor and the assignee;

(4) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(5) A statement affirming that the owner of the existing OCS facility and lessee of the lease in which the facility is located approve of the proposed assignment and assignee;

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the Alternate Use RUE;

(7) Evidence required by § 285.107 that the assignee satisfies the requirements of § 285.106; and

(8) A statement on how the assignee will comply with the financial assurance requirements as set forth in the Alternate Use RUE.

(c) The assignment takes effect on the date we approve your request.

(d) The assignor is liable for all obligations that accrue under an Alternate Use RUE before the date we approve your assignment request. An assignment approval by MMS does not relieve the assignor of liability for accrued obligations that the assignee, or a subsequent assignee fail to perform.

(e) The assignee and each subsequent assignee are liable for all obligations that accrue under an Alternate Use RUE after the date we approve the assignment request.

§ 285.1014 When will MMS suspend an Alternate Use RUE?

(a) The MMS may suspend an Alternate Use RUE if:

(1) Necessary to comply with judicial decrees;

(2) Continued activities pursuant to the Alternate Use RUE pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;

(3) The suspension is necessary for reasons of national security or defense; or

(4) We have suspended or temporarily prohibited operation of the facility that is subject to the Alternate Use RUE and have determined that continued activities under the Alternate Use RUE are unsafe or cause undue interference with the lessee's operation of the existing facility.

(b) A suspension will extend the term of your Alternate Use RUE grant for the period of the suspension.

§ 285.1015 How do I relinquish an Alternate use RUE?

(a) You may voluntarily surrender an Alternate Use RUE by submitting a written request to us that includes the following:

(1) The company name and the physical address of its headquarters;

(2) A contact official within the company, including his or her telephone and fax numbers and e-mail address;

(3) The reason you are requesting relinquishment of the Alternate Use RUE;

(4) The MMS-assigned Alternate Use RUE number;

(5) The name of the associated OCS facility, its owner and the lessee for the lease in which the OCS facility is located;

(6) The name, title, and signature of your authorizing official (which must match exactly the name, title, and signature in the MMS qualification records); and

(7) A statement that you will adhere to the decommissioning requirements in the Alternate Use RUE.

(b) We will not approve your relinquishment request until you have paid all outstanding rentals (or other payments) and fines.

(c) The relinquishment takes effect on the date we approve your request.

§ 285.1016 When will an Alternate Use RUE be cancelled?

The Secretary may cancel an Alternate Use RUE if:

(a) You no longer qualify to hold an Alternate Use RUE;

(b) You fail to provide any additional security required by MMS, replace or provide additional coverage for a de-valued bond, or replace a lapsed or forfeited bond within the prescribed time period;

(c) Continued activity under the Alternate Use RUE is likely to cause serious harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance;

(d) Continued activity under the Alternate Use RUE is determined to be adversely impacting ongoing lease activities on the existing OCS facility;

(e) You fail to comply with any of the terms and conditions of your approved Alternate Use RUE or your approved plan; or

(f) You otherwise fail to comply with applicable laws or regulations.

§ 285.1017 [Reserved]

Decommissioning an Alternate Use RUE

§ 285.1018 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

(a) The holder of an Alternate Use RUE is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE.

(b) The lessee under the lease originally issued under this subchapter will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under other parts of this subchapter.

§ 285.1019 What are the decommissioning requirements for an Alternate Use RUE?

(a) Decommissioning requirements will be determined by MMS on a case-by-case basis, and will be included as terms of each Alternate Use RUE.

(b) Decommissioning activities must be completed within one year of termination of the Alternate Use RUE.

(c) If you fail to satisfy all decommissioning requirements within the prescribed time period, we will call for the forfeiture of your bond or other financial guarantee, and you will remain liable for all accidents or damages that might result from such failure.

PART 290—APPEAL PROCEDURES

7. Revise the authority citation for part 290 to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 43 U.S.C. 1331

8. Revise the last sentence in § 290.2 to read as follows:

§ 290.2 Who may appeal?

* * * A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3), 281.21(a)(1), or 285.118, is not subject to the procedures found in this part.

[FR Doc. E8–14911 Filed 7–8–08; 8:45 am]
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Federal Register

Wednesday,
July 9, 2008

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Critical Habitat Revised Designation for the Kootenai River Population of the White Sturgeon (*Acipenser transmontanus*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0072] [92210–1117–0000–FY08–B4]

RIN 1018–AU47

Endangered and Threatened Wildlife and Plants; Critical Habitat Revised Designation for the Kootenai River Population of the White Sturgeon (*Acipenser transmontanus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the designation of critical habitat for the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) (Kootenai sturgeon) under the Endangered Species Act of 1973, as amended (Act). In total, 18.3 river miles (RM) (29.5 river kilometers (RKM)) of the Kootenai River are designated as critical habitat within Boundary County, Idaho.

DATES: This rule becomes effective August 8, 2008.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/easternwashington*. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 E. Montgomery Drive, Spokane, WA 99206; telephone 509–891–6839; facsimile 509–891–6748.

FOR FURTHER INFORMATION CONTACT: Susan Martin, Field Supervisor, Upper Columbia Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Home Range

The Kootenai sturgeon, listed as endangered in 1994 (September 6, 1994; 59 FR 45989), is restricted to approximately 168 RM (270 RKM) of the Kootenai River in Idaho, Montana, and British Columbia, Canada. One of 18 land-locked populations of white sturgeon known to occur in western North America, the range of the Kootenai sturgeon extends from Kootenai Falls, Montana, located 31 RM (50 RKM) below Libby Dam, Montana, downstream through Kootenay Lake to Corra Linn Dam at the outflow from Kootenay Lake in British Columbia. The downstream waters of Kootenay Lake drain into the Columbia River system. For the purposes of this rule, this portion of the Kootenai River is divided into three geomorphic reaches: (1) The canyon reach, which extends from Kootenai Falls at RM 193.9 (RKM 312.0) in Montana to RM 159.7 (RKM 257.0) below the confluence with the Moyie River in Idaho; (2) the braided reach, which begins at the end of the canyon reach and extends downstream to RM 152.6 (RKM 246.0) at Bonners Ferry; and (3) the meander reach, which extends from the end of the braided reach at RM 152.6 (RKM 246.0) downstream to the confluence with Kootenay Lake in British Columbia at RM 74.6 (RKM 120.0). This reach includes an area described as the ''transition zone'' between RM 142.7 (RKM 245.9) and RM 151.8 (RKM 244.5) that joins the braided and meander reaches.

Critical habitat is currently designated in the braided reach from RM 159.7 (RKM 257.0), below the confluence with the Moyie River, downstream to RM 152.7 (RKM 245.9) at Bonners Ferry, and continues downstream into the meander reach to RM 141.4 (RKM 228), for a total of 18.3 RM (29.5 RKM) (71 FR 6383).

The canyon reach is characterized by rocky substrates and a relatively high water surface gradient. Downstream the valley broadens, and the river forms the low-gradient ''braided reach'' as it courses through multiple shallow channels over gravel and cobbles (Barton *et al.* 2005, p. 19; Berenbrock 2005a, p. 7). The meander reach is characterized by primarily sandy substrate, a low water-surface gradient, a series of deep holes, and low water velocities under present river operations. A deep hole (39 to 49 feet (ft) (12 to 19 meters (m)) deep) exists near Ambush Rock at approximately 151.7 RM (RKM 244.2) (Berenbrock 2005b, pp. 7–8) and is frequented by sturgeon in spawning condition. Both adult and juvenile sturgeon forage in and migrate freely throughout the lower Kootenai River, but apparently no longer commonly occur upstream of Bonners Ferry, Idaho (Partridge 1983, pp. 1, 23, 25; Apperson and Anders 1990, pp. 19, 22, 23, 25; Apperson and Anders 1991, pp. 36–37, 39–44, 48–49), although there are no apparent physical barriers to sturgeon migration within these three geomorphic reaches of the Kootenai River. However, during recovery team discussions, shallow waters in the braided reach that have occurred since construction of Libby Dam have been suggested as a possible behavioral barrier to migration into the upstream canyon reach, where suitable spawning and incubation habitats appear to exist.

Population Status and Life History

Although information is not available specifically for Kootenai sturgeon, white sturgeon in general are very long-lived, with females living from 34 to 70 years; some individuals may approach or exceed 100 years of age (NatureServe 2008; PSMFC 2008). It is believed that Kootenai sturgeon do not reach sexual maturity until 28 and 30 years, respectively, for males and females (Paragamian *et al.* 2005, p. 525). Thereafter, females spawn at 4-to 6-year intervals.

The number of Kootenai sturgeon has decreased from approximately 7,000 individuals in the 1970s to fewer than an estimated 500 adults by 2005, with fewer than 30 females projected to be spawning annually after the year 2015 (Paragamian *et al.* 2005, p. 526). Decreases in the abundance of Kootenai sturgeon were first noted beginning in the mid-1960s. These decreases were attributed primarily to the effects of diking and pollutants (Partridge 1983, p. 42). Almost no recruitment of juveniles has been detected since 1974, soon after Libby Dam began operating (Partridge 1983, p. 28; Apperson and Anders 1991, p. 45; Paragamian *et al.* 2005, p. 524). The current rate of population decline is estimated to be 9 percent per year, based on annual mortality rates in the absence of significant recruitment (Paragamian *et al.* 2005, p. 528). The final listing rule for the Kootenai sturgeon cites the hydropower and flood control operations of Libby Dam, a U.S. Army Corps of Engineers (Corps) facility upstream in Montana, as the primary threat to the Kootenai sturgeon because these operations adversely affect spawning and incubation habitat (September 6, 1994; 59 FR 45989).

Many Kootenai sturgeon spend part of their lives in Kootenay Lake in British Columbia and migrate upstream to spawn in the Kootenai River. The sturgeon have been described as having a unique two-step pre-spawning migration process, migrating first from the lower river and Kootenay Lake during autumn to staging reaches in the Kootenai River, then migrating in spring to the spawning reach near Bonners Ferry, Idaho (Paragamian *et al.* 2001, p. 22; Paragamian *et al.* 2002, p. 608). Successful reproduction is dependent upon Kootenai sturgeon spawning at

sites where the eggs can settle in an area that supports their viability, and where the free embryos that emerge from the eggs have appropriate habitat for development and protection from predators (mobile or free embryos are embryos that have hatched and still have the yolk sac attached; larvae refers to young fish that have absorbed the yolk sac and are actively feeding). For the Kootenai sturgeon, these needs appear to be met by rocky substrates for spawning and attachment of eggs, and meeting in-water minimum flow, depth, and temperature requirements on at least an intermittent basis during the spawning period from May through the end of June.

Although rocky substrates do not seem to be a cue for spawning site selection, they appear to be essential to the viability of eggs and the survival of free embryos. White sturgeon are broadcast spawners and release demersal eggs (eggs that quickly sink to the bottom) that are initially adhesive upon exposure to water (Paragamian *et al.* 2001, pp. 24, 27, and references therein; Anders *et al.* 2002, p. 73). Rocky substrates provide fixed surfaces for the attachment of the adhesive eggs during incubation and also provide shelter for the ''hiding phase,'' the period following hatching in which free embryos seek cover from predators in the inter-gravel spaces (Brannon *et al.* 1985, p. 58; Parsley *et al.* 2002, pp. 58–59). Although we have little information specific to spawning substrates for Kootenai sturgeon, in other areas where white sturgeon are reliably reproducing and recruiting, the river bed at spawning sites typically consists of several miles of gravel, cobble, and boulder substrates that provide shelter and cover during this free embryo hiding phase. Successful spawning and incubation sites, such as the tailraces at Bonneville and Ice Harbor Dams on the Columbia River, have at least 5 RM (8 RKM) of suitable rocky substrate before transitioning into sandy substrate (Parsley *et al.* 1993, Table 2, p. 220 and p. 224).

White sturgeon spawn in fast-flowing water, and water velocity appears to act as a cue for spawning. In the reach of the lower Columbia River immediately below Bonneville Dam, water velocity at spawning sites ranged from 2.6 to 9.2 ft per second (ft/s) (0.8 to 2.8 m per second (m/s)) (Parsley *et al.* 1993, Table 2, p. 220). Parsley and Beckman (1994, Figure 2, p. 815) suggest that optimal spawning conditions may occur when the mean water column velocity is 4.9 ft/s (1.8 m/s) or greater. In the Sacramento River, observed white sturgeon spawning sites had water velocities exceeding 3.3 ft/s (1.0 m/s) (Schaffter 1997, pp. 1, 113). White sturgeon spawning in fast-flowing water greater than or equal to 3.3 ft/s (1.0 m/s) may experience reduced predation on eggs by limiting access of some predators to spawning and incubation areas (Brannon *et al.* 1985, p. 13; Miller and Beckman 1996, pp. 338–339; Anders *et al.* 2002, p. 73 and Table 1, p. 75; Parsley *et al.* 2002, p. 60). Fast-flowing waters also serve to maintain the exposed rocky substrate essential for successful egg incubation and the free embryo hiding phase of the Kootenai sturgeon's reproduction cycle.

Water depth also appears to be an important factor in spawning site selection for the Kootenai sturgeon. In the Columbia River, sturgeon eggs collected on mats ranged in depth from 13 to 89 ft (4 to 27 m), with median spawning depths of 19.7 to 36.1 ft (6 m to 11 m) (Parsley *et al.* 1993, Table 2, p. 220). In the Kootenai River, the mean depth of radio-tagged white sturgeon during the spawning period was 21.3 ft (6.5 m) (Paragamian and Duehr 2005, p. 265). The mean water depth of the river during the spawning period was 30.8 ± 15.1 ft (9.4 ± 4.6 m) (Paragamian and Duehr 2005, p. 263). In a study based on sturgeon egg collections in the Kootenai River, Paragamian *et al.* 2001 (Table 2, p. 26) report average river depths at egg sites ranging from 27.9 to 42.7 ft (8.5 to 13.3 m), and eggs were found at depths ranging from 16.4 to 59 ft (5 to 18 m). Egg collection sites are likely more shallow than actual spawning sites, because high water velocity and turbulence in spawning areas may transport eggs to more shallow water (Parsley 2005, p. 1; Parsley 2006a, p. 1; Parsley 2006b, p. 1); thus, the depth at which spawning occurs is most likely greater than the depth at which eggs are found.

Although data collected on white sturgeon spawning in other areas may be considered as additional support for identifying the water depths associated with Kootenai sturgeon for spawning, we consider data specific to the environmental conditions in the Kootenai River to represent the best available scientific information for the Kootenai sturgeon. Our synthesis of the best available data specific to the Kootenai sturgeon, as described, indicates that a minimum water depth of 23 ft (7 m) is requisite for successful spawning at a level sufficient to achieve recovery.

Kootenai sturgeon spawn within a fairly narrow range of water temperatures, from 47.3 to 53.6 degrees Fahrenheit (°F) (8.5 to 12 degrees Celsius (°C)) (Paragamian *et al.* 2002, p. 27). Paragamian and Wakkinen (2002, p. 547) identify temperatures between 49.1 and 49.9°F (9.5 and 9.9°C), or roughly 50°F (10°C), as those at which spawning has the highest probability of occurring in the Kootenai River. Sudden drops of water temperature greater than 3.6°F (2.0°C) cause males to become reproductively inactive, thereby negatively affecting egg fertilization (Lewandowski 2004, p. 6).

Successful spawning of Kootenai sturgeon thus appears to require several synchronous environmental factors during the spawning period: the presence of sufficient rocky substrates to provide shelter for egg attachment and for normal free embryo behavior, and fast-flowing (in excess of 3.3 ft/s (1.0 m/s), deep (equal to or greater than 23 ft (7.0 m)) water at a relatively stable temperature of approximately 50 °F (10 °C).

Although Kootenai sturgeon continue to spawn annually in the Kootenai River, this spawning has not resulted in significant levels of recruitment for over 30 years. A Kootenai sturgeon female is capable of releasing at least 100,000 eggs per spawning year, and field monitoring has shown most eggs are being fertilized (Paragamian *et al.* 2001, p. 26). However, based on data from 1992 through 2001, it is estimated that on average, a total of only about 10 juvenile sturgeon currently may be naturally produced in the Kootenai River annually (Paragamian *et al.* 2005, p. 524). The last significant sturgeon recruitment in the Kootenai River occurred in 1974, the last season prior to Libby Dam becoming fully operational in 1975 (Partridge 1983, p. 28). This recruitment failure is attributed largely to the spawning of Kootenai sturgeon over unsuitable sandy substrates (Paragamian *et al.* 2001, p. 29).

Since the construction of Libby Dam, most Kootenai sturgeon spawn over sandy substrates in the meander reach below Bonners Ferry. The meander reach has a low stream gradient, and substrates are composed primarily of sand and other fine materials overlying lacustrine clay (Barton 2003, p. 45; Barton *et al.* 2004, pp. 1, 18–21). Many of the eggs that are located in this reach are found drifting along the river bottom, covered with fine sand particles in sites without rocky substrate (Paragamian *et al.* 2001, p. 26), and where mean water column velocities seldom exceeded 3.3 ft/s (1.0 m/s) (Paragamian *et al.* 2001, Table 2, p. 26; Barton *et al.* 2005, Table 3). The sandy substrate in the current spawning sites in the Kootenai River differs from the rocky substrate that occurs in successful

white sturgeon spawning sites elsewhere in the Columbia River Basin (Paragamian *et al.* 2001, pp. 28–29; Parsley *et al.* 1993, Table 2, p. 220 and Figure 6, p. 222; Parsley and Beckman 1994, pp. 812–827; Kock *et al.* 2006, pp. 134–135, 139 and references therein).

Laboratory experiments suggest that high embryo or larval mortality results from smothering by fine-sediment substrates, such as the sand that dominates the Kootenai River at the present spawning sites (Kock *et al.* 2006, pp. 134–141). Larval white sturgeon kept in an aquarium were observed to burrow into fine sediments with lethal results (Brannon 2002, as cited in Anders *et al.* 2002, p. 76). Due to the predominately sandy substrate in the meander reach and its unsuitability for egg attachment, incubation, and larval survival, it is unlikely that this area was the historical spawning site for Kootenai sturgeon. However, white sturgeon hatchery releases of age 2-plus years in this area have shown high survival (Ireland *et al.* 2002, p. 647), indicating that the meander reach can successfully support age 2-plus year-old juvenile sturgeon.

The altered hydrograph of the Kootenai River below Libby Dam has resulted in decreased water velocities and depths, with negative effects on Kootenai sturgeon reproduction. In the current sturgeon spawning sites in the meander reach, the Kootenai River is characterized by mean water column velocities less than 3.3 ft/s (1.0 m/s), as well as shifting sand substrates (Barton *et al.* 2004, pp. 18–21; Anders *et al.* 2002, Table 1, p. 75). Low water velocity is believed to be a factor facilitating predation of sturgeon eggs and free embryos in the Columbia River (Golder Associates 2005, pp. 1–2, 29–30; Miller and Beckman 1996, pp. 338–339). Free embryos emerging in low water velocities (0.8 in/s (2.0 cm/s)), such as those that presently dominate in the meander reach, remained mobile in the water column 2 days longer than did those emerging in higher water velocity (3.1 in/s (7.9 cm/s)) (Brannon *et al.* 1985, pp. 14, 16). This delay in initiating the free embryo hiding phase may increase the risk of mortality of embryos emerging in these waters (Brannon *et al.* 1985, pp. 13–15).

Since Libby Dam became operational, the peak flow events in the Kootenai River at Bonners Ferry during the sturgeon spawning and incubation period have been significantly reduced (Partridge 1983, p. 3; Corps 2005, p. 9). Mean spring flows that reached 80,000 cubic feet per second (cfs) (2,265.3 cubic meters per second (cms)) prior to the construction of the dam were reduced to flows of less than 10,000 cfs (283.2 cms) through the early 1990s (Berenbrock 2005a, p. 2). The median river stage at Bonners Ferry during peak flow events in the Kootenai River during the sturgeon spawning and incubation period has been reduced by 14 ft (4.27 m) (U.S. Army Corps of Engineers 2004, Figure 2–5, p. 10). This is a substantial change, since the braided reach beginning at Bonners Ferry is now usually less than 7 ft (2.2 m) deep (Berenbrock 2005, p. 7). There is recent evidence that portions of the Kootenai River channel within the braided reach have become wider, shallower, and more unstable since Libby Dam became operational (Barton 2005a, p. 3, and unpublished data). Peak flows of 40,000 cfs (1,200 cms) that typically occurred during the spawning and incubation period in the Kootenai River over an average of 30 days prior to dam construction have not been reached for a period of more than 2 days since the dam was completed, with only two exceptions (Hoffman 2005a, p. 8).

In summary, natural spawning in the Kootenai River has not resulted in sufficient levels of recruitment into the aging population of the Kootenai sturgeon to reverse the strong negative population trend that has been observed over the last 30 years. This recruitment failure appears to be related to changes in riverbed substrate and reduced river flows, reduced water velocities, lowered water depths, and downstream movement of the velocity transition points with reduced flows since Libby Dam became operational. While water depth appears to be a significant factor, it is unclear how other altered parameters may be involved in causing the sturgeon to spawn primarily at sites below Bonners Ferry in the meander reach. These sites have unsuitable sandy riverbed substrates, insufficient rocky substrate (Barton 2003, pp. 1–48; Barton 2004, pp. 18–21; Anders *et al.* 2002, pp. 73, 76), and water velocities insufficient to provide protection from predation for eggs and free embryos and to assure normal dispersal behavior among free embryos (Parsley *et al.* 1993, pp. 220–222, 224–225; Miller and Beckman 1996, pp. 338–339). The braided reach provides suitable rocky substrates, but a large portion of the braided reach has become wider and shallower due to loss of energy from reduced flows, reduced backwater effects, and bed load accumulation (the accumulation of large stream particles, such as gravel and cobble carried along the bottom of the stream) (Barton *et al.* 2004, p. 17; Hoffman 2005, p. 9; Barton 2005a and unpublished data). The increase in bed load is a result of the broadening of the braids and water velocity reductions.

Further details on the ecology and life history requirements of the Kootenai sturgeon can be found in our final listing rule (September 6, 1994; 59 FR 45989), the recovery plan for the Kootenai sturgeon (U.S. Fish and Wildlife Service 1999), our previous final rule designating critical habitat for the Kootenai sturgeon (September 6, 2001; 66 FR 46548), and our interim rule designating critical habitat for the Kootenai sturgeon (February 8, 2006; 71 FR 6383).

Previous Federal Actions

A description of Federal actions concerning the Kootenai sturgeon that occurred prior to our September 6, 2001, final rule designating critical habitat can be found in that final rule (September 6, 2001; 66 FR 46548). That final rule designated 11.2 RM (18 RKM) of the Kootenai River in the meander reach as critical habitat, from RM 141.4 (RKM 228) to RM 152.6 (RKM 246).

On February 21, 2003, the Center for Biological Diversity filed a complaint against the Corps and the Service (CV 03-29-M-DWM) in Federal Court in the District of Montana, stating, among other issues, that designated critical habitat for the Kootenai sturgeon was inadequate, as it failed to include areas of rocky substrate.

On May 25, 2005, the District Court of Montana ruled in favor of the plaintiffs, and remanded the critical habitat designation to the Service for reconsideration with a due date of December 1, 2005. We filed a motion to alter or amend the judgment, and the Court extended the deadline for releasing a revised critical habitat designation to February 1, 2006. In the interim, the Court ruled that the 2001 designation of critical habitat remained in effect. In response to the District Court ruling and to meet the Court's deadline, we published an interim rule designating an additional reach of the Kootenai River, the braided reach, as critical habitat for the Kootenai River sturgeon on February 8, 2006 (71 FR 6383), resulting in a total of 18.3 RM (29.5 RKM) designated; we also completed a Draft Economic Analysis of Critical Habitat Designation for the Kootenai River White Sturgeon (Northwest Economic Associates 2006) and the Final Economic Analysis of Critical Habitat Designation for the Kootenai River White Sturgeon (ENTRIX, Inc. 2008; ENTRIX was formerly Northwest Economic Associates). Although the interim rule designating critical habitat for the Kootenai sturgeon constituted a final

rule with regulatory effect, it also opened a comment period on the substance of the rule. This revised final rule considers and incorporates, where appropriate, the comments received on the interim rule.

We solicited comments from species experts and the public on the interim rule and the draft economic analysis. A summary of these comments and our responses follow.

Summary of Comments and Recommendations

We requested comments from the public on the interim rule's designation of critical habitat for the Kootenai sturgeon and the associated draft economic analysis during a comment period that opened concurrent with the publication of the interim rule on February 8, 2006 (71 FR 6383), and closed on April 10, 2006. In addition, we held an information meeting and public hearing in Bonners Ferry, Idaho, on March 16, 2006. We contacted appropriate Federal, State, and local agencies and Tribes; scientific organizations; and other interested parties and invited them to comment on the interim rule and draft economic analysis during this open comment period.

We received six comments during the comment period and public hearing, all from organizations or individuals. We did not receive any comments from State or Federal agencies or Tribes. In addition, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the Kootenai sturgeon, the geographic region where the species occurs, and conservation biology principles. All five of the individuals we contacted responded.

We reviewed all comments received from the public and the peer reviewers for substantive issues and new information regarding the designation of critical habitat for the Kootenai sturgeon. All substantive information provided from the public and the peer reviewers has been either incorporated directly into this final rule or addressed in the following summary.

Peer Reviewer Comments

1. *Comment*: Both the braided channel and the canyon reach are essential to the conservation of the Kootenai sturgeon. Without these areas, it is difficult to understand how natural recruitment of the magnitude and frequency required to recover the sturgeon can occur.

Our Response: We have included the braided channel in this revised final critical habitat designation because it is essential to successful spawning and egg attachment and incubation, which are currently the life stages we believe are limiting natural recruitment of Kootenai sturgeon. There is limited information on whether, or how, Kootenai sturgeon use the canyon reach. Information available at this time indicates the canyon reach has the elements necessary to support Kootenai sturgeon spawning, but the fish do not currently appear to use the area for this purpose. We are willing to consider any additional information demonstrating that the canyon reach is essential to the conservation of the Kootenai sturgeon.

2. *Comment*: The background information regarding the need for a sustained increase in river discharge from Libby Dam to restore natural spawning habitat conditions is compelling.

Our Response: We identified the primary constituent elements (PCEs) of Kootenai sturgeon critical habitat based on the best available scientific information, including a flow regime during the spawning season that approximates natural variable conditions.

3. *Comment*: The rule indicates that Kootenai sturgeon spawning and the initial three weeks of life are the most important stage to protect, but does not elaborate on why this period was selected. The commenter offered that while critical data are lacking, their experience and that of many other sturgeon researchers suggest that year-class strength and recruitment is established by the end of the larval life interval, which for white sturgeon occurs at about day 55–65, not day 21.

Our Response: In designating critical habitat, we consider those physical and biological features that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations or protections. Current data indicate that the population bottleneck that is limiting Kootenai sturgeon recovery is at the egg attachment and incubation life phase (Paragamian *et al.* 2001, pp. 22–33; Paragamian *et al.* 2002, pp. 608, 615); thus we have concentrated on this stage as the most important life phase to protect. We are not aware of data indicating that the larval period between day 21 and day 65 is currently limiting Kootenai sturgeon recovery and is in need of special management. We are willing to consider additional information in this regard.

4. *Comment*: The background information states that fertilized eggs will be deposited just downstream of the spawning site; yet, no data are given to support this conclusion. The information on spawning of adults in deep pools with high water velocities suggest most eggs will not be at the spawning site and that eggs could be distributed downstream for several kilometers, as happens during white sturgeon spawning in the Columbia River.

Our Response: We agree with the peer reviewer that fertilized eggs can drift downstream and may not remain immediately below the spawning site. In the interim rule published in the **Federal Register** on February 8, 2006 (71 FR 6383), we state, ''The linear downstream extent of rocky substrate from spawning sites is also important because eggs and free embryos are dispersed downstream by the current.''

5. *Comment*: The rule shows designated critical habitat ending at RM 141.4, which does not include all of the pre-spawning staging reach of adults (RM 125–152). Furthermore, no estimate of the length of river reach needed downstream of existing spawning areas for rearing of egg-larvae-juvenile life intervals is provided. Given recently documented dispersal behavior of Kootenai sturgeon during early life intervals, there is not one discrete rearing reach but, instead, a long reach downstream from egg deposition used for rearing of free embryos and larvae. Dispersal likely places early juveniles many miles (kilometers) downstream from the spawning site.

Our Response: We agree with the peer reviewer that areas downstream from the critical habitat designation are important for the pre-spawning staging of adult Kootenai sturgeon and rearing of free embryos, larvae, and juveniles. However, the best available scientific information indicates that spawning and egg attachment and incubation are the limiting life stages of Kootenai sturgeon population growth (Paragamian *et al.* 2001, pp. 22–33; Paragamian *et al.* 2002, pp. 608, 615). Therefore, this final rule focuses solely on these life stages and the physical and biological features essential to support these life stages that may require special management.

6. *Comment*: Research data specific to the Kootenai River supports increasing the primary constituent element for water depth to a minimum of 23 ft.

Our Response: We concur. The preponderance of applicable scientific information from the Kootenai River and elsewhere in the range of white sturgeon where reproduction is successfully occurring suggests a mean

water depth of at least 23 ft (7 m) is necessary for a level of spawning that could potentially lead to recovery (Parsley *et al.* 1993, Table 2, p. 220; Parsley 1995, p. 1; Parsley and Kappenman 2000, Table 1, p. 199; Paragamian *et al.* 2001, pp. 28, 30; Golder and Associates 2005, Table 4.1, p. 59 and Table 4.4, p. 62; Barton *et al.* 2005 p. 37; Paragamian and Duehr 2005, Figure 2, pp. 264–265; Parsley 2006a, p. 1; Parsley 2006b, p. 1). Based on public comments and other information received, a second round of peer review comments was sought specifically on the primary constituent elements for water depth and changes in water temperature associated with spawning behavior. We received five responses, all of which addressed a spawning site depth criterion of at least 23 ft (7 m). These reviewers acknowledged that this criterion is well supported by data on sites within the range of white sturgeon where reproduction is occurring. Based on the reconsideration of the data, along with public and peer review comments, we have changed the primary constituent element for water depth from a minimum of 16 ft (5 m) (February 8, 2006; 71 FR 6383) to 23 ft (7 m) in this final rule.

7. *Comment*: Regarding the depth Primary Constituent Element (PCE), there are examples of white sturgeon in other river systems utilizing shallow water habitat. For example, sturgeon were observed rolling in a shallow side channel and embryos and larvae were then collected in that side channel of the Fraser River, British Columbia, Canada (see Perrin *et al.* 1999).

Our Response: The lower Fraser River is an area where white sturgeon continue to reproduce regularly. Perrin *et al.* (1999, p. iv) noted that waters of the mainstem Fraser River in the vicinity of the Minto channel are approximately 33 ft (10 m) deep, and that they had no actual sturgeon spawning observations in their study. Two eggs were collected at one location in the adjacent Minto channel at a depth of 9.8 ft (3 m), and where water velocity was 4.3 ft/s (1.3 m/s). Based on observations by Parsley (2005, p. 1; 2006a, p. 1; 2006b, p. 1), when water velocity is high, some sturgeon eggs may be redistributed to shallower sites prior to attachment on substrate. A single female may release more than 100,000 eggs in a spawning event. Therefore, we believe that the presence of only two eggs found at a depth of 9.8 ft (3 m) in the Minto channel of the Fraser River may be anomalous and not useful in defining minimum spawning habitat water depth. Furthermore, the comment is based primarily on the capture sites of 20 free embryos; free embryos are mobile upon hatching (Perrin *et al.* 1999, p. iii), and are therefore an unreliable indicator of actual sturgeon spawning sites.

8. *Comment*: The derivation of the 5-mile linear extent of the PCE involving rocky substrate is not cited.

Our Response: We have identified 5 miles (8 kilometers) as a minimum length of continuous rocky substrate based on observations of minimum habitat conditions at similar sites below Bonneville and Ice Harbor Dams where white sturgeon are known to reproduce annually. Although the authors do not explicitly state the linear extent of the rocky substrate utilized in these areas, this information is derived from the observations of spawning locations, water velocity, and substrate use provided in Parsley *et al.* 1993.

Comments from the Public

1. *Comment*: The February 8, 2006, critical habitat interim rule (71 FR 6383) was legally deficient because it failed to alert the public that a significant practical effect or goal of the critical habitat designation is increasing the level of Kootenay Lake in British Columbia.

Our Response: The February 8, 2006, interim critical habitat rule included a section on special management considerations documenting that ''threats to the braided reach include shallow water depths'' (71 FR 6388). The public was advised that appropriate special management would include measures to provide for water depths during the sturgeon spawning season that would provide for the conservation needs of the species. The operation of Kootenay Lake is outside the control of Federal agencies and the Service; nothing in the critical habitat designation has the legal effect of requiring Canadian authorities to raise the level of the lake.

2. *Comment*: The Service should have prepared an environmental document under the National Environmental Policy Act (NEPA) analyzing the effect of the critical habitat designation. The court opinion that held that NEPA is not applicable to critical habitat designations is limited to its facts and should not apply to the Kootenai sturgeon critical habitat.

Our Response: The Ninth Circuit, in Douglas County v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995) (*Douglas County*), held that NEPA is inapplicable to critical habitat designations. We contend that the court's opinion in *Douglas County* contained no intention to limit the holding to that specific situation. The opinion speaks in broad terms that apply to any critical habitat designation, explaining that requiring a NEPA analysis would be inconsistent with, or redundant to, Act requirements for designating critical habitat. The court explained:

''The purpose of the ESA [Act] is to prevent extinction of species, and Congress has allowed the Secretary to consider economic consequences of actions that further that purpose. But Congress has not given the Secretary the discretion to consider environmental factors, other than those related directly to the preservation of the species. The Secretary cannot engage in the very broad analysis NEPA requires when designating a critical habitat under the ESA [Act]'' (48 F.3d at 1507).

The court concluded that ''the legislative histories of NEPA and the ESA (Act) likewise indicate that Congress did not intend that the Secretary file an Environmental Impact Statement (EIS) before designating a critical habitat'' (48 F.3d at 1507).

3. *Comment*: The draft economic analysis is defective because it does not factor in the increased level of Kootenay Lake that may be necessary to achieve desired river depths for sturgeon, and the impacts of higher lake levels are likely to have enormous economic consequences. No information regarding any costs above the amount that might be expected as a result of higher Kootenay Lake levels was provided.

Our Response: The level of Kootenay Lake is controlled by Canadian authorities; critical habitat designation has no legal effect on the actions of a foreign government. The draft economic analysis included an estimate of the cost of crop damage that might be expected as a result of flows required for Kootenai sturgeon recovery.

4. *Comment*: The critical habitat designation would result in higher water tables and an increased risk of flooding, which would be a compensable taking of private property under the Fifth Amendment. In addition, a potential ''relative benefits'' defense by the Service, where the landowner incurs both harm and benefits that must be weighed against each other, would not apply because no relative benefits would be imparted by critical habitat designation.

Our Response: Designation of critical habitat imposes no direct regulatory burden on private parties; it requires Federal agencies to insure that actions that they authorize, fund, or carry out, do not adversely modify designated habitat (16 U.S.C. 1536(a)(2)). A private party with a Federal grant or permit that constitutes a ''nexus'' for purposes of the Act's section 7 might bear an

indirect regulatory burden as a result of a critical habitat designation. Courts assess takings claims based on the degree of impairment of the property interest, the owner's reasonable expectations, and the importance of the government interest being advanced. In light of these factors, we believe that no compensable taking will occur as a result of designation of critical habitat.

5. *Comment*: The Service violated the Act by promulgating the interim rule without the requisite 90-day notice as is indicated under section 4(b)(5) of the Act.

Our Response: We were under a court order to issue a critical habitat rule for Kootenai sturgeon by a specific date, and the schedule imposed by the court made it impracticable to issue a proposed rule prior to a final rule. We acknowledge that section 4(b)(5) of the Act requires a 90-day advance notice before the effective date of a final rule. However, we believe that we remedied the situation as well as possible by seeking both public and peer review comments on the interim rule and reconsidering it in light of those comments, as we are doing here. In the declaration that accompanied our motion to amend the court's May 25, 2005, judgment, we explained that the timeline given by the court to issue a new final rule was insufficient to complete a legally proper and well-justified revision of critical habitat.

Under these circumstances, we have determined under 5 U.S.C. 553(b)(3)(B) that we had good cause to issue the interim rule without prior opportunity for public comment because prior notice and public procedure would have been impracticable. From the time required to research the interim rule, we did not have sufficient time to issue a proposed rule, open a reasonable comment period, and subsequently issue a final rule prior to the court-imposed deadline. Therefore, without issuance of an interim rule, we would have been in violation of the court order. Thus, in effect, the interim rule served as the proposed rule for this revised final rule, and the Service treated the interim rule as the proposed rule for the purpose of complying with ESA § 4(b)(5).

6. *Comment*: The Service has failed to acknowledge the need for special management to address PCEs that may not be fully available at all times or places within designated critical habitat.

Our Response: This final rule designates critical habitat within the braided and meander reaches of the Kootenai River that will require special management to restore functional water depth, flow timing, and water temperature. At this time, these PCEs are intermittently present within these reaches of the Kootenai River.

7. *Comment*: The Service used flawed reasoning in stating that Libby Dam is part of the environmental baseline, and thus that its continued operation will not result in adverse modification of critical habitat. The commenter further stated that the operations of Libby Dam are widely acknowledged as being the primary reason the sturgeon is headed toward extinction, and the reason why the sturgeon fails to spawn in the braided reach.

Our Response: The Service's use of the term ''environmental baseline'' is restricted to the section 7 compliance process under the Act. In that context, the future effects of Libby Dam operations on the Kootenai sturgeon and its critical habitat are not part of the environmental baseline. The Service defines the term ''environmental baseline'' as ''* * * the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.'' On that basis, the effects of Libby Dam construction and past operations on the Kootenai sturgeon and its critical habitat are part of the environmental baseline.

At the time the sturgeon was listed and critical habitat was designated, all future operations of Libby Dam were subject to the jeopardy and adverse modification of critical habitat standards under section 7(a)(2) of the Act. Because the action of constructing the dam was completed in 1973, the continued presence of the dam is not an action subject to the requirements of section 7 of the Act. However, the effects of future operations on listed species and critical habitat are subject to the requirements of section 7 of the Act. Subsequently, we completed formal consultations with the Corps, Bureau of Reclamation (BOR), and the Bonneville Power Administration (BPA) on the effects of Libby Dam operations on the sturgeon in 1995, 2000, and 2006; our 2006 Biological Opinion (BO) on the effects of Libby Dam operations on the Kootenai sturgeon also addressed the effects of dam operations on designated critical habitat (USFWS 2006b). The latter two consultations resulted in BOs in which we concluded that future operations of Libby Dam, as proposed by the Federal action agencies, were likely to jeopardize the continued existence of the sturgeon and adversely modify its critical habitat.

In accordance with our regulations, we included a Reasonable and Prudent Alternative (RPA) to the proposed operation of Libby Dam that would avoid jeopardy and adverse modification in our 2006 BO. The Corps, as operator of Libby Dam, and BPA, as marketer of the hydropower generated at Libby Dam, are currently implementing the RPA.

8. *Comment*: The current designation of critical habitat, which includes only the river to the high water mark, improperly excludes side channel habitats.

Our Response: The braided reach of the Kootenai River designated as critical habitat includes several side channels that, because of their structure and condition, function as both foraging and spawning habitat for the Kootenai sturgeon. These areas have not been excluded from the designation.

9. *Comment*: If in the future it is found that designation of this critical habitat is not necessary, what process is there for removing it from critical habitat?

Our Response: Section 4(a)(3)(A) of the Act and implementing regulations at 50 CFR 424.12 require that ''critical habitat shall be specified to the maximum extent prudent and determinable.'' Critical habitat is considered not prudent when the identification of critical habitat can be expected to increase the degree of threat from taking or other human activity, or if the designation of critical habitat would not be beneficial to the species. In the absence of a ''not prudent'' finding, the Act requires that we designate critical habitat for listed species. The Act does provide that critical habitat designations may be revised, as appropriate. Any revisions would occur through the rulemaking process.

10. *Comment*: Hopefully, this designation will not affect the private gravel operations that take place upstream of the designated area.

Our Response: The effect of a critical habitat designation is that activities authorized, funded, or carried out by a Federal agency require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. For example, activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (for example, Federal Highway Administration or Federal Emergency Management Agency funding), would be subject to the

section 7 consultation process. Activities on State, Tribal, local, or private lands that are not carried out, funded, or authorized by a Federal agency are not subject to any regulatory requirements as a result of critical habitat designation. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, and the designation of critical habitat does not allow government or public access to private lands.

Summary of Changes from the Interim Rule

In developing this revised final critical habitat rule for the Kootenai sturgeon, we reviewed peer review and public comments received on the interim rule and draft economic analysis published in the **Federal Register** on February 8, 2006 (71 FR 6383), as well as a second round of peer review comments received specifically on the PCEs. Based on comments received, including peer review comments, this final rule modifies the interim rule in the following ways:

(1) We have made the PCEs more explicit to more clearly communicate the best available scientific information regarding the conservation needs of the species.

(2) We have modified the depth PCE (PCE 1) from a minimum of 16 ft (5 m) to a minimum of 23 ft (7 m) to more accurately reflect the best available science, indicating that mean water depth of at least 23 ft (7 m) is necessary for spawning site selection by white sturgeon in the Kootenai River (for example, Paragamian *et al.* 2001, Table 2, p. 27, p. 29, and Figure 4, p. 29; Paragamian and Duehr 2005, p. 263, 265; Parsley 2006a, p. 1; Parsley 2006b, p. 1).

(3) In the interim rule, we stated that we added 6.9 RM (11.1 RKM) to the critical habitat designation, but later stated that this additional reach extends from ''RM 159.7 (RKM 257) to RM 152.6 (RKM 245.9),'' which is actually 7.1 RM. The area designated as critical habitat in the interim rule remains unchanged in this revised final rule. This final rule simply corrects the RM totals to indicate that we added 7.1 RM to our 2001 designation of 11.2 RM, for a total of 18.3 RM.

(4) We have combined the two former units, the braided reach and the meander reach, into a single designation because the two units are contiguous, and clarified the location of the river reaches within the designation:

(i) The braided reach begins at RM 159.7 (RKM 257.0), below the confluence with the Moyie River, and extends downstream within the Kootenai River to RM 152.6 (RKM 246.0) below Bonners Ferry.

(ii) The meander reach begins at RM 152.6 (RKM 246.0) below Bonners Ferry, and extends downstream to RM 141.4 (RKM 228.0) below Shorty's Island.

(iii) This designation includes the 0.9 mi (1.5 km) ''transition zone,'' described in the February 2006 interim rule (71 FR 6383) that joins the meander and braided reaches at Bonners Ferry.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resource management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and (in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved), may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species. Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources include the recovery plan for the species, if available; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine to be necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may require consultation under section 7 of the Act and may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied at the time of listing to propose as critical habitat within areas occupied by the species at the time of listing, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal;

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

As required by 50 CFR 424.12(b)(5), we are to list the known PCEs with our description of critical habitat. The PCEs provided by the physical and biological features upon which the designation is based may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

Primary Constituent Elements for the Kootenai Sturgeon

We identified the PCEs for Kootenai sturgeon critical habitat based on our knowledge of the life history, biology, and ecology of the species, and the physical and biological features of the habitat necessary to sustain its essential life history functions, as described in the Background section of this rule. We are changing the PCEs from those identified in our critical habitat interim rule (February 8, 2006; 71 FR 6383) to better fit our current understanding of the features needed to support the sturgeon's life history functions, and to reflect the information received from peer review and public comment.

This designation focuses solely on spawning and rearing habitats, the factors that we understand to be currently limiting to sturgeon conservation (Paragamian *et al.* 2001, pp. 22–33; Paragamian *et al.* 2002, pp. 608, 615). All of the following PCEs must be present during the spawning and incubation period for successful spawning, incubation, and embryo survival to occur. However, although the PCEs to support successful spawning must occur simultaneously in time and space, it is not necessary for them to be present through the entire spawning period, nor must they be present throughout the entire designated area. The PCEs are:

(1) A flow regime, during the spawning season of May through June, that approximates natural variable conditions and is capable of producing depths of 23 ft (7 m) or greater when natural conditions (for example, weather patterns, water year) allow. The depths must occur at multiple sites throughout, but not uniformly within, the Kootenai River designated critical habitat.

(2) A flow regime, during the spawning season of May through June, that approximates natural variable conditions and is capable of producing mean water column velocities of 3.3 ft/s (1.0 m/s) or greater when natural conditions (for example, weather patterns, water year) allow. The velocities must occur at multiple sites throughout, but not uniformly within, the Kootenai River designated critical habitat.

(3) During the spawning season of May through June, water temperatures between 47.3 and 53.6 °F (8.5 and 12 °C), with no more than a 3.6 °F (2.1 °C) fluctuation in temperature within a 24-hour period, as measured at Bonners Ferry.

(4) Submerged rocky substrates in approximately 5 continuous river miles (8 river kilometers) to provide for natural free embryo redistribution behavior and downstream movement.

(5) A flow regime that limits sediment deposition and maintains appropriate rocky substrate and inter-gravel spaces for sturgeon egg adhesion, incubation, escape cover, and free embryo development. Note: the flow regime described above under PCEs 1 and 2 should be sufficient to achieve these conditions.

This critical habitat designation is focused on Kootenai sturgeon spawning habitats and egg attachment and egg incubation habitats, as these areas are currently the limiting habitat components essential to Kootenai sturgeon conservation (Paragamian *et al.* 2001, pp. 22–33; Paragamian *et al.* 2002, pp. 608, 615). Maintaining the PCEs in this designated area is consistent with our recovery objective to re-establish successful natural recruitment of Kootenai sturgeon (U.S. Fish and Wildlife Service 1999, p. iv). However, the presence of PCE components related to flow, temperature, and depth are dependent in large part on the amount and timing of precipitation in any given year. These parameters vary during and between years, and at times some or all of the parameters are not present in the area designated as critical habitat. Within the critical habitat reaches, the specific conditions are variable due to a number of factors such as snowmelt, runoff, and precipitation. This designation recognizes the natural variability of these factors, and does not require that the PCEs be available year-round, or even every year during the spawning period. At present, the PCEs are achieved only infrequently, such as in 2006 during the ''stacked flow'' operations when the Kootenai River reached river stage 1,763.61 MSL (feet above mean sea level; 537.5 m) at Bonners Ferry (Corps 2007, p. 6), resulting in the first documented movement of tagged female Kootenai sturgeon into the braided reach above Bonners Ferry (Kootenai Sturgeon Recovery Team 2006, pp. 1–2). The designation means that sufficient PCE components to support successful spawning must be present and protected during the spawning season of May through June at multiple sites throughout, but not uniformly within,

the Kootenai River designated critical habitat in all years when natural conditions (for example, weather patterns, water year) make it possible.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas occupied by the species at the time of listing contain the physical and biological features essential to the conservation of the species, and whether these features may require special management consideration or protections. In this case, the threats to the physical and biological features in the area designated as critical habitat that may require special management considerations or protections include shallow water depths (loss of deeper water habitat), low water velocities, and sudden drops in water temperature that adversely affect Kootenai sturgeon breeding behavior.

Both of the designated reaches provide the physical and biological features that are essential to the Kootenai sturgeon for spawning, egg attachment, incubation, and juvenile rearing, and both require special management to ensure that the appropriate water depths, velocities, and temperature are achieved during the spawning period in all years when natural conditions allow.

Libby Dam is operated by the Corps to meet a variety of needs, including power production, flood control, recreation, and special operations for the recovery of species listed under the Act, including Kootenai sturgeon, bull trout, and salmon in the lower Columbia River. The Corps currently operates the dam so as not to exceed 1,764 MSL at Bonners Ferry, Idaho (the flood stage designated by the National Weather Service for the purposes of flood protection). However, flood stage can be exceeded due to unexpected increased inflow to Libby Dam or due to tributary flows downstream of Libby Dam (U.S. Fish and Wildlife Service 2006b, p. 5). The Corps has noted that it considers 1,764 MSL to be the ''current target river stage for Libby Dam operations'' (Corps 2007, p.1).

The Corps conducted a stacked flow operation in spring 2006 to test different flow strategies for meeting the habitat attributes identified for the Kootenai sturgeon in the Service's 2006 BO on the effects of Libby Dam operations on the Kootenai sturgeon and its critical habitat (U.S. Fish and Wildlife Service 2006b). The stacked flow operation was developed to utilize Libby outflows at full powerhouse capacity (25,000 cfs) and temperature control at the dam (to the extent possible) such that releases were timed to ''stack'' on local tributary inflows to provide velocities, depth, and temperature conditions specified in the BO. The operation, initiated in May 2006, controlled releases from the dam as much as possible to provide the appropriate temperature for sturgeon migration and spawning (Corps 2006, p. 5). This stacked flow operation demonstrated that the Corps was able to achieve depth in the middle of the channel, continuously exceeding 23 ft (7m) as far upstream as RM 153.1, with some areas exceeding 39 ft (12 m) between RM 152 and 157, at flows below flood stage (Corps 2007, p. 6).

We recognize that, due to existing morphologic constraints and limitations at Libby Dam, the depth PCE described in this rule (23 ft; 7 m) is currently not achievable on an annual basis in the braided reach. Since the construction of Libby Dam and the subsequent altered hydrograph, the braided reach has become shallower and wider (Barton 2005a, unpublished data), thus limiting the ability to achieve the depth PCE in the braided reach in most years. To address this issue, the Kootenai Tribe of Idaho, in cooperation with regional partners and Federal managers, is pursuing the Kootenai River Ecosystem Restoration Project. This restoration project has as one of its goals to ''restore and maintain Kootenai River habitat conditions that support all life stages'' of Kootenai sturgeon. The objectives of the project include (but are not limited to): adjusting ''the dimension, pattern, and profile of the river * * * to match current flow, hydraulic, and sediment transport regimes resulting from the construction and operation of Libby Dam''; and addressing ''depth requirements'' of Kootenai sturgeon (Kootenai Tribe of Idaho 2008, p. 4). Until this project is implemented, we recognize that the ability to meet the depth PCE in the braided reach is limited. However, we also acknowledge that the depth PCE has been achieved intermittently under current operating conditions (stacked flows in 2006).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial information available in determining those areas that were occupied by the species at the time of listing and contain PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the species in our designation of critical habitat. We relied on information in our prior rulemaking, our recovery plan, more recent information on the biological needs of the species summarized in our 2006 interim rule designating critical habitat for the Kootenai sturgeon (71 FR 6383), and new information gained through the peer review and public comment process on that interim rule.

We have also reviewed available information that pertains to habitat requirements of this species. The materials included data and analysis in section 7 consultations and gathered by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; original data sets and data analyses; and accounts of involved scientists and resource managers.

This designation focuses solely on those life stages that are, based on the best available scientific information, limiting productivity (that is, spawning and egg attachment and incubation), which is the limiting demographic parameter relative to Kootenai sturgeon population recovery. Using this framework, we selected those areas where sturgeon currently spawn in the meander reach; areas with appropriate rocky substrates in the braided reach where sturgeon may be expected to spawn successfully under the appropriate temperature, depth, and flow conditions; and those areas downstream of spawning sites that are essential for egg attachment and incubation.

Final Revised Critical Habitat Designation

We are designating approximately 18.3 RM (29 RKM) of the Kootenai River as revised critical habitat within Boundary County, Idaho. This designation maintains as critical habitat the 7.1 RM (11 RKM) ''braided reach,'' and the 11.2 RM (18 RKM) ''meander reach,'' from the February 8, 2006, interim rule (71 FR 6383). Included within this designation is the 0.9 mi (1.5 km) transition zone that joins the meander and braided reaches at Bonners Ferry, as described in the interim rule. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing that contain the physical and biological features essential for the conservation of the species and that may require special management.

Land Ownership

The reach of the Kootenai River designated as critical habitat lies within ordinary high-water marks as defined for regulatory purposes (33 CFR 329.11). Upon achieving Statehood in 1890, the

State of Idaho claimed ownership of the bed of the Kootenai River and its banks up to ordinary high-water marks. Based upon early U.S. Forest Service (USFS) maps from 1916, U.S. Geological Survey maps from 1928, and the confining effects of the private levees completed by the Corps in 1961, it appears that the ordinary high-water marks originally delineating State lands on the Kootenai River in the upper meander reach and braided reach are essentially unchanged. Because of the scale of the available maps, it is possible that minor river channel changes have occurred since Statehood, and that some small portions of private lands now occur within the ordinary high-water marks. However, we understand that most of the lands where these changes may have occurred lie within the flowage and seepage easements purchased by the Federal government under Public Law 93–251, section 56, passed in 1974 (Ziminske 1999). In addition, when the river meanders, the ''government lot'' or parcel owners abutting State-owned riverbeds and banks may request parcel boundary adjustments to the new ordinary high-water mark, and corresponding adjustments in taxable acreage. The lateral extent of the State-owned riverbeds and banks along the steep levees may be closely approximated today through the Corps' definition of ordinary high-water mark cited above. Thus, we believe the areas designated as critical habitat are within lands owned by the State of Idaho.

Braided Reach

The braided reach begins at RM 159.7 (RKM 257), below the confluence with the Moyie River, and extends downstream within the Kootenai River to RM 152.6 (RKM 246) below Bonners Ferry. Within this reach the valley broadens, and the river forms the braided reach as it courses through multiple shallow channels over gravel and cobbles (Barton *et al.* 2004). This reach was occupied by Kootenai sturgeon at the time of listing, and is currently occupied by foraging and migrating sturgeon. Tagged female sturgeon moved into the braided reach above Bonners Ferry during the spawning period in 2006, although it is not known whether spawning occurred in the area (Kootenai Sturgeon Recovery Team 2006, pp. 1–2). Gravel and cobble are exposed along the bottom of the Kootenai River in the braided reach (Barton *et al.* 2004, pp. 18–19; Berenbrock 2005a, p. 7), and water velocities in excess of 3.3 ft/s (1 m/s) are likely achieved on a seasonal basis due to the high surface gradient in this reach (Berenbrock 2005a, Figure 11, p. 23). At present, the braided reach provides the temperatures, depths, and velocities required to trigger spawning only occasionally, and these features require special management for spawning sturgeon.

Meander Reach

The meander reach begins at RM 152.6 (RKM 246) below Bonners Ferry, and extends downstream to RM 141.4 (RKM 228) below Shorty's Island. This reach was occupied by Kootenai sturgeon at the time of listing, is used by foraging and migrating sturgeon, and is currently the primary spawning reach for Kootenai sturgeon (Paragamian *et al.* 2002, p. 608, and references therein). Although most of the reach is composed primarily of sand substrates unsuitable for successful spawning, some limited areas of gravel and cobble are present or at least exposed intermittently (Paragamian *et al.* 2002, p. 609; Barton *et al.* 2004, pp. 18–19). Although appropriate depths are available on occasion in this reach (Paragamian *et al.* 2001, Table 2, p. 26; Barton 2004, Table 1, p. 9; Berenbrock 2005a, p. 7), the temperatures and velocities required for successful spawning require special management to be achieved on more than an infrequent basis.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. U.S. Fish and Wildlife Service *et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional, or retain the current ability for the PCEs to be functionally established, to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion (BO) for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a BO concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat in a manner not previously analyzed.

Federal activities that may affect the Kootenai sturgeon or its designated critical habitat will require consultation under section 7(a)(2) of the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit

(such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduce the conservation value of critical habitat for the Kootenai sturgeon.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation include, but are not limited to:

(1) Actions that would affect flows in ways that would reduce the value of the PCEs essential to the conservation of the species. For example, activities that alter riverbed substrate composition, or reduce flows, water velocity, or water depths essential for normal breeding behavior, migration upriver to spawning sites, breeding site selection, shelter, dispersal, or survival of incubating eggs or developing free embryos.

(2) Actions that would significantly change water temperature or cause a rapid drop in water temperature during the migration and spawning period, such as ramping rates associated with upstream hydroelectric operations or spillway operations, that may adversely modify water temperatures necessary for normal breeding behavior.

(3) Actions that would significantly affect channel geomorphology, particularly the reduction or alteration of rocky substrates, which provide for the successful adhesion and incubation of eggs, as well as shelter and escape cover for free embryos. Activities that could bury or remove rocky substrate include, but are not limited to, changes in land management activities that accelerate sediment releases into the Kootenai River; channelization; levee reconstruction; stream bank stabilization; gravel removal; and road, railroad, bridge, pipeline, or utility construction.

We consider the designated critical habitat to contain the physical and biological features essential to the conservation of the Kootenai sturgeon. The designated reaches are within the geographic range of the species, were occupied by the species at the time of listing, and are likely to be used for spawning by the Kootenai sturgeon. Federal agencies already consult with us on activities in areas currently occupied by the Kootenai sturgeon, in cases where it may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the Kootenai sturgeon.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Based on the best available information, including the prepared economic analysis, we believe that all of the revised designated critical habitat contains the features that are essential for the conservation of this species. We have additionally determined that within the designation no lands are owned or managed by the Department of Defense, no habitat conservation plans currently exist for the species, and no Tribal lands or trust resources exist. We have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not excluded any areas from this designation of critical habitat for Kootenai sturgeon based on economic or other relevant impacts. As such, we have considered, but not excluded, any lands from this designation based on the potential impacts to these factors.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when exclusion will result in the extinction of the species.

Concurrent with the publication of the interim rule (February 8, 2006; 71 FR 6383), we conducted an economic analysis to estimate the potential economic effect of the designation (Northwest Economic Associates 2006). The analysis addressed the economic impacts of adding the braided reach to existing critical habitat in the meander reach, which we designated in 2001 (66 FR 46548). The draft economic analysis on the 2006 interim rule was thus in addition to the economic analysis that had been prepared earlier on the 2001 designation. The draft economic analysis was made available for public review on February 8, 2006 (71 FR 6383). We accepted comments on the draft analysis until April 10, 2006. The final economic analysis was finalized on June 6, 2008 (ENTRIX, Inc. 2008), which is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/easternwashington*.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Kootenai sturgeon. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis addressed the distribution of any potential impacts of the designation, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly

burden a particular group or economic sector.

This analysis focused on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by State and other Federal agencies. Economic impacts that result from these types of protections were not included in the analysis because they were considered to be part of the regulatory and policy baseline.

The economic analysis relied heavily on secondary sources of information, including documents and studies conducted for the Corps, the Service, and other stakeholders. The primary source of information for the economic analysis was the Upper Columbia Basin Alternative Flood Control and Fish Operations Draft Environmental Impact Statement (EIS), and supporting documents, prepared by the Corps and the Bureau of Reclamation (BOR), and submitted for public comment in November 2005. This EIS was in response to the 2000 National Oceanic and Atmospheric Administration (NOAA) and Service BOs on the operation of the Federal Columbia River Power System. The data, assumptions, and results from the Draft EIS, and its supporting documentation and modeling, were not independently tested or verified.

The geographic area of analysis included both the meander reach and the braided reach, for a total of 18.3 miles (29.5 kilometers) of the Kootenai River from RM 159.7 (RKM 257.0) to RM 141.4 (RKM 228.0). The economic analysis was based on the reasonable and prudent alternative in our February 2006 BO on operations of Libby Dam, a component of the Federal Columbia River Power System. Based on the recommendations in the 2006 BO, future costs (2006 through 2025) associated with conservation activities for the sturgeon were estimated to range from $305 million to $610 million using a 7 percent discount rate and $425 to $900 million using a 3 percent discount rate. Annualized impacts associated with the conservation related impacts ranged from $29 million to $61 million at 3 percent and $29 million to $58 million at 7 percent. The activity potentially most affected is the operation of Libby Dam. However, all but $20,000 to $30,000 in post-designation anticipated costs are joint costs or co-extensive costs (associated with listing and critical habitat). That is, the sturgeon water flows and almost all of the resulting potential impacts were determined to most likely occur regardless of the addition of the braided reach (or a portion thereof) to the critical habitat designation. The economic analysis thus concluded that there were minimal incremental impacts associated with the designation of the braided reach (Northwest Economic Associates 2006, p. ES–2).

The majority of costs (94 percent) was for hydropower generation and related infrastructure improvements and was expected to be borne by Federal agencies. The other 6 percent of costs were related to agriculture and were expected to be borne by private individuals, mainly impacts to the Anheuser-Busch hop farm located downstream of the meander reach.

After weighing the potential benefits and costs of the initial proposed designation, in 2001 the Secretary chose not to exercise his authority under section 4(b)(2) of the Act to exclude any areas from the initial designation of the meander reach (September 6, 2001; 66 FR 46548). In 2006, following the additional designation of the braided reach, the Secretary again chose not to exercise his authority to exclude any areas from the designation. Although the geographic area covered by this final rule is exactly the same as that already addressed in the 2006 draft economic analysis, we have changed the depth PCE from 16 ft (5 m) to 23 ft (7 m) in response to public and peer review comment and the best available scientific information; thus, we considered whether this change might have any economic impact on the designation. As described above, the Corps currently operates Libby Dam with 1,764 ft (537.7 m) as the current target river stage (Corps 2007, p. 1). In addition, the Corps is managing flows to meet the habitat attributes described in the 2006 BO, which sets the depth attribute at 16 to 23 ft (5 to 7 m). Since the Corps has demonstrated that it can achieve the requisite depth of 23 ft (7 m) under stacked flows at levels below 1,764 ft (537.7 m), the new PCE can be achieved at least intermittently within the current authorities of the Corps and will not require a change to its current operations. We, therefore, do not foresee any further economic impact of this designation and have determined that no further revision of the economic analysis is needed. We have considered the economic and other relevant impacts of the designation based on the economic analysis and currently available information, and are not excluding any areas from the designation.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than

$11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Kootenai River population of white sturgeon. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

Approximately 30 small agriculture operations could be impacted by conservation measures for the sturgeon.These operations represent approximately 7 percent of the number of small farms operating within the county. Flow-related agricultural impacts are joint costs in that these conservation-related impacts are not materially different from those impacts from listing the sturgeon, so burdens to small agricultural operations from the critical habitat designation are unlikely. We have therefore determined that this rule will not have a significant economic impact on a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could lead to regulatory requirements for the approximately four small businesses, on average, that may be subject to consultation each year regarding their project's impact on the Kootenai River population of the white sturgeon and its habitat. First, if we conclude in a BO that a proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a BO that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act; for example, dredge and fill activities could affect navigable waters and wetlands designated as critical habitat; and

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies.

It is likely that a project proponent could modify a project or take measures to protect the Kootenai River population of the white sturgeon. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and interim rule designating critical habitat. These measures are not likely to result in a significant economic impact to small entities because the cost of these measures would be borne by Federal agencies.

In summary, we have considered whether this designation would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. Therefore, we are certifying that this final designation of critical habitat for the Kootenai River population of the white sturgeon will not have a significant economic impact on a substantial

number of small entities. A regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' issued May 18, 2001, requires Federal agencies to submit a ''Statement of Energy Effects'' for all ''significant energy actions'' in order to present consideration of the impacts of a regulation on the supply, distribution, and use of energy. Significant adverse effects are defined in the Executive Order by the OMB according to the following criteria:

(1) Reductions in crude oil supply in excess of 10,000 barrels per day;

(2) Reductions in fuel production in excess of 4,000 barrels per day;

(3) Reductions in coal production in excess of 5 million tons per year;

(4) Reductions in natural gas production in excess of 25 million Mcf (1000 cubic feet) per year;

(5) Reductions in electricity production in excess of 1 billion kilowatt-hours (kWh) per year or in excess of 500 megawatts (MW) of installed capacity;

(6) Increases in energy use required by the regulatory action that exceed any of the thresholds above;

(7) Increases in the cost of energy production in excess of 1 percent;

(8) Increases in the cost of energy distribution in excess of 1 percent; or

(9) Other similarly adverse outcomes.

Two of these criteria are relevant to this analysis: (5) Reductions in electricity production in excess of one billion kilowatt hours (kWh) per year or in excess of 500 megawatts (MW) of installed capacity, and (7) Increases in the cost of energy production in excess of 1 percent. Our analysis below determines whether the electricity industry is likely to experience ''a significant adverse effect'' as a result of Kootenai sturgeon conservation activities.

Based on components of the February 2006 BO, including the relaxed ramping rates and the increased lake levels at Kootenay Lake, the modeled hydropower generation numbers will differ from those presented in the economic analysis. The relaxation of ramping rates at Libby Dam will enable quicker decision-making responses to market conditions, while the potential management of Kootenay Lake at higher elevations during June and July will result in the availability of water used to generate power downstream in the Federal Columbia River Power System later in the summer when energy prices are typically higher. However, the actual impact of the February 2006 BO on power generation cannot be estimated without additional modeling by the Corps. While the power generation results cannot be adjusted without additional modeling efforts, the impact of the February 2006 BO on power generation is expected to be less than the power generation impacts presented in the economic analysis. Considering the results of the energy impacts analysis in the economic analysis were below the thresholds suggested by OMB, and that the power generation impacts are expected to be less under the February 2006 BO, the power generation impacts resulting from the February 2006 BO are also expected to be below OMB thresholds. The energy impacts analysis from the economic analysis are presented below.

Evaluation of Whether the Designation Will Result in Reductions in Electricity Production in Excess of One Billion kWh Per Year or in Excess of 500 MW of Installed Capacity

Installed capacity is ''the total manufacturer-rated capacity for equipment such as turbines, generators, condensers, transformers, and other system components'' and represents the maximum rate of flow of energy from the plant or the maximum output of the plant. As noted in Section 4 of our economic analysis, modifying dam operations to provide sturgeon flows in late spring and early summer would result in the release of water from Libby Dam that otherwise would have been stored for release the following winter. If run through the powerhouse, the water would be used to generate electricity during months when the value of electricity is generally lower. If spilled over the dam, the water would be lost to use for power generation. After leaving Libby Dam, these sturgeon flows would then work their way down the Columbia River Basin, through other hydropower facilities. Depending on the situation at a particular dam, the water would either be lost to use for power generation or used to generate electricity during months when the value of electricity is generally lower. However, these are power production issues, as installed capacity at Libby Dam and at other hydropower facilities downstream from Libby remain unchanged. Therefore, the screening level analysis focuses on changes in energy production. Because energy production is affected at Libby Dam and at hydropower facilities downstream from Libby, the screening level analysis assesses changes in energy production system-wide.

The Corps modeled the impacts of sturgeon flows on system-wide electricity production. While model results show a slight increase in power production at Libby Dam following sturgeon flows, the system-wide impact is a net loss in power generation. The net loss of 274 gigawatt hours (GWh) (the greatest energy production impact under the alternative sturgeon flow scenarios), or 274 million kWh, is less than 27 percent of the one billion kWh threshold suggested by OMB.

Evaluation of Whether the Designation Will Result in an Increase in the Cost of Energy Production in Excess of One Percent

The Corps and the BOR are the owners and operators of the 31 federally owned hydro projects on the Columbia and Snake Rivers; the Corps is the owner of Libby Dam. BPA, a Federal agency under the Department of Energy, markets and distributes the power generated from these Federal dams and from the Columbia Generating Station. The dams and the electrical system are known as the Federal Columbia River Power System. While BPA is part of the Department of Energy, it is not tax-supported through government appropriations. Instead, BPA recovers all of its costs through sales of electricity and transmission and repays the U.S. Treasury in full with interest for any money it borrows. Revenues collected through power rates cover the costs of operation of the hydro projects and the transmission system as well as the debt service required to repay the capital investment in the system; it also contributes to other costs associated with these projects, such as the conservation efforts to protect fish and wildlife in the Columbia River Basin.

BPA's service territory covers all of Washington, Oregon, Idaho, and western Montana, as well as small portions of California, Nevada, Utah, Wyoming, and eastern Montana. BPA provides about half the electricity used in the Northwest and operates over three-fourths of the region's high-voltage transmission. BPA is also a participant in the Northwest Power Pool (hereafter ''Pool''), an organization composed of major generating utilities serving the Northwestern United States (Oregon, Washington, Idaho, and Montana, as well as Nevada, Utah, and parts of California and Wyoming), British Columbia, and Alberta. The Pool was established to more effectively coordinate operations to ''achieve reliable operations of the electrical power system, coordinate power system planning, and assist in transmission in the Northwest Interconnected Area.''

For the purpose of this screening level analysis, the increase in the cost of energy production due to designation will be compared to the cost of energy production in the Northwest Interconnected Area (as defined by the Pool, and including the States of Oregon, Washington, and Idaho, western Montana, parts of Nevada, and the provinces of British Columbia and Alberta).

The analysis below considers the probability that one of the following will lead to an increase in the cost of energy production of one percent or more: (1) A reduction of approximately 274 GWh of hydroelectric production (the greatest energy production impact under the alternative sturgeon flow scenarios); (2) the cost of BPA-funded, sturgeon-related conservation projects (for example, studies, monitoring, and fish hatchery); and (3) the capital cost of modifying Libby Dam to allow passage of an additional 10,000 cfs of sturgeon flows (above the 25,000 cfs powerhouse capacity) through the powerhouse or over the spillway or both without violating Montana water quality standards. These items were all based on the reasonable and prudent alternatives in the 2006 BO. Because 274 GWh represents a small amount of the regional generating capacity (31 average MW), the screening level analysis assumes the electricity will be purchased from an alternative source, and that the most likely source of replacement energy is electricity from a gas turbine peaking facility. Reductions in power value (revenues) due to changes in the timing of power production are not considered in the screening level analysis as lost revenues and do not represent an increase in energy production costs.

First, total annual electricity generation is estimated, by fuel type, for the region (Northwest Interconnected Area). As shown in Table A–2 of our economic analysis (ENTRIX, Inc. 2008), the region produced 380,281 GWh of electricity in 2006.

Next, the average operating expense is calculated for each fuel type. In this screening level analysis,the average, in mills per kWh, is determined for 2006 and then converted into dollars per kWh (ENTRIX, Inc. 2008, Table A–3).

The energy reduction portion of total sturgeon-related impacts to energy costs for the region is then calculated assuming (1) no change in power operations at Columbia River Basin dams (baseline) and (2) the replacement of 274 GWh of system power with power from a gas turbine facility (ENTRIX, Inc. 2008, Table A–4). This reduction in hydroelectric output is not expected to reduce the total cost of hydroelectric power production since hydroelectric production costs are largely fixed. Therefore, the estimated cost of annual hydroelectric energy production under the sturgeon conservation activities (alternative) remains the same as annual production costs under baseline operations. The cost of purchasing the 274 GWh of lost system hydro power from a gas turbine facility is estimated at $13.5 million annually.

Last, the cost of BPA- and Corps-funded, sturgeon-related conservation and the capital cost of modifying Libby Dam to allow passage of an additional 10,000 cfs of sturgeon flows (above the 25,000 cfs powerhouse capacity) through the powerhouse, over the spillway, or both, without violating Montana water quality standards, is added to the cost of purchasing 274 GWh of energy from the gas turbine facility. The impact of these costs is determined by comparing them to the total regional energy production costs, assuming no change in power operations at Columbia River Basin hydro facilities. As illustrated in Table A–4 of our economic analysis (ENTRIX, Inc. 2008), the additional cost of sturgeon-related conservation efforts is 0.71 percent of the estimated annual baseline cost of regional energy production, which is less than the 1 percent threshold suggested by OMB.

In summary, only two adverse effects of energy supply, distribution, or use were relevant to this analysis, and neither was considered significant: (1) The net loss of gigawatt hours is anticipated to be less than 27 percent of the threshold suggested by OMB, and (2) the additional cost of sturgeon-related energy production is less than the 1 percent threshold suggested by OMB. Therefore, this final rule to designate critical habitat for the Kootenai River sturgeon is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. Four small local governments, Libby, MT (population 2,626), Bonners Ferry, ID (population

2,515), Troy, MT (population 957), and Moyie Springs, ID (population 656), are located either adjacent to, or in the vicinity of the designated critical habitat. All four of the local governments have populations that fall within the criteria (fewer than 50,000 residents) for ''small entity.'' There is one record of a section 7 consultation with the Corps relating to the City of Bonners Ferry in 2005. This was an informal consultation on the installation of residential water meters. The proposed work will not occur within waterways or riparian areas and will not affect the sturgeon. As such, a Small Government Agency Plan is not required. Based on the consultation history and the economic analysis on this critical habitat designation, we do not foresee any significant impact to small governments.

Takings

In accordance with Executive Order 12630, (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Kootenai River population of the white sturgeon in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of this rule with, appropriate State resource agencies in Idaho. The designation of critical habitat in areas currently occupied by the Kootenai River population of the white sturgeon imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have revised the final rule designating critical habitat in accordance with the provisions of the Endangered Species Act. This rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kootenai River population of the white sturgeon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no tribal lands were occupied by the Kootenai River population of the white sturgeon at the time of listing, and no tribal lands that are unoccupied are essential to the conservation of the species. Therefore, no tribal lands are involved with this rule. However, because of the significant involvement by the Kootenai Tribe of Idaho (KTOI) in the conservation aquaculture program and other aspects of sturgeon recovery, we will continue to consult on a government-to-government basis with the KTOI as we implement recovery actions and this critical habitat designation.

References Cited

A complete list of all references cited in this designation is available upon request from the Supervisor, Upper Columbia Fish and Wildlife Office (see **ADDRESSES** above).

Author(s)

The primary authors of this notice are staff of the Upper Columbia Fish and Wildlife Office (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(e), revise the entry for ''White Sturgeon (*Acipenser transmontanus*); Kootenai River Population '' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

White Sturgeon (*Acipenser transmontanus*); Kootenai River Population

(1) Critical habitat is designated in Idaho, Boundary County, on the Kootenai River from river mile (RM) 141.4 (river kilometer (RKM) 228) to RM 159.7 (RKM 257), as indicated on the map in paragraph (3) of this entry, from ordinary high-water mark to opposite bank ordinary high-water mark as defined in 33 CFR 329.11.

(2) The primary constituent elements of critical habitat for the Kootenai River population of the white sturgeon are:

(i) A flow regime, during the spawning season of May through June, that approximates natural variable conditions and is capable of producing depths of 23 feet (ft) (7 meters (m)) or greater when natural conditions (for example, weather patterns, water year) allow. The depths must occur at multiple sites throughout, but not uniformly within, the Kootenai River designated critical habitat.

(ii) A flow regime, during the spawning season of May through June, that approximates natural variable conditions and is capable of producing mean water column velocities of 3.3 feet per second (ft/s) (1.0 meters per second (m/s)) or greater when natural conditions (for example, weather patterns, water year) allow. The velocities must occur at multiple sites throughout, but not uniformly within, the Kootenai River designated critical habitat.

(iii) During the spawning season of May through June, water temperatures between 47.3 and 53.6 degrees Fahrenheit (°F) (8.5 and 12 degrees Celsius (°C)), with no more than a 3.6°F (2.1°C) fluctuation in temperature within a 24-hour period, as measured at Bonners Ferry.

(iv) Submerged rocky substrates in approximately 5 continuous river miles (8 river kilometers) to provide for natural free embryo redistribution behavior and downstream movement.

(v) A flow regime that limits sediment deposition and maintains appropriate rocky substrate and inter-gravel spaces for sturgeon egg adhesion, incubation, escape cover, and free embryo development.

(3) Note: Map of critical habitat follows:

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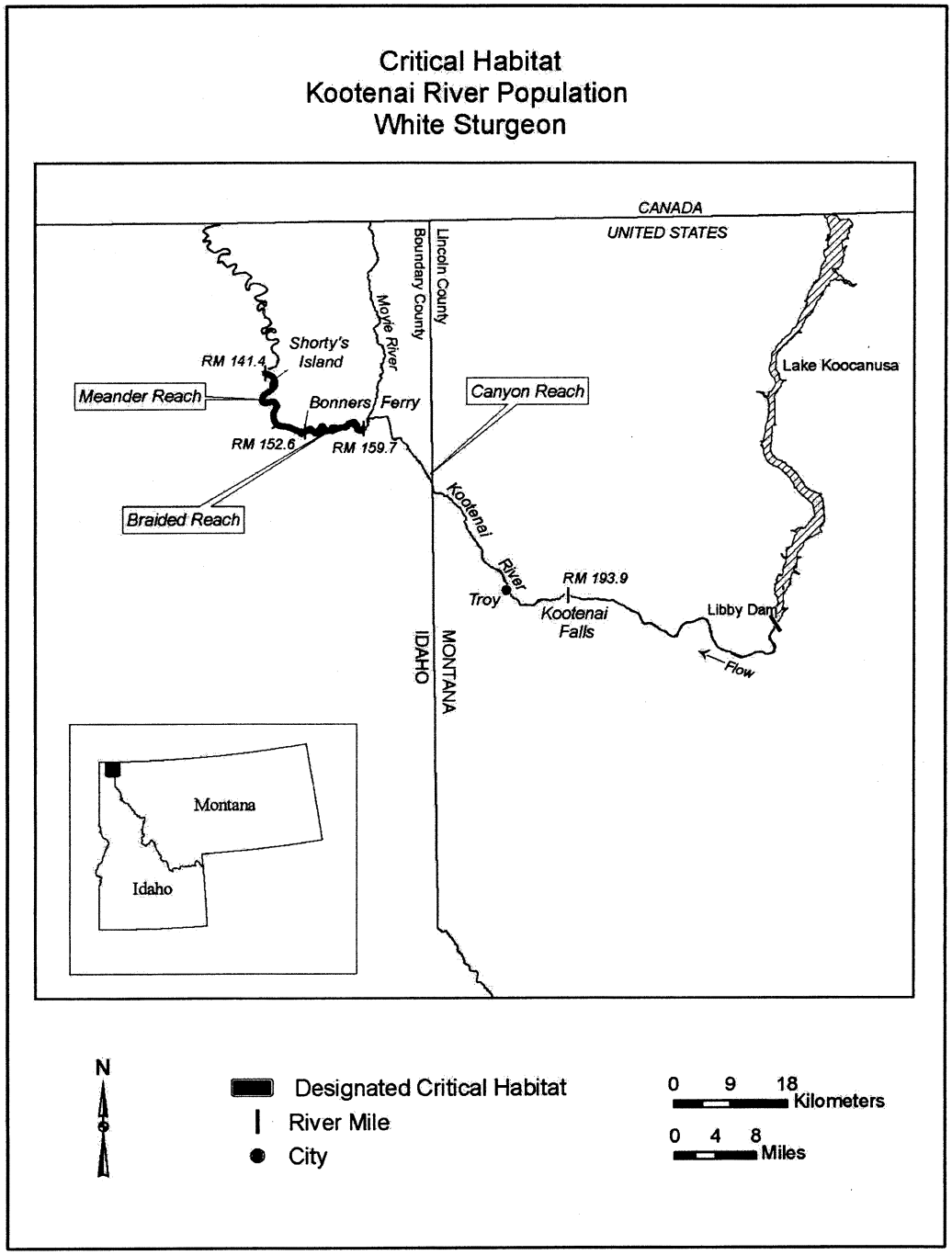

* * * * *

Dated: June 26, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–15134 Filed 7–8–08; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
July 9, 2008

Part IV

Securities and Exchange Commission

17 CFR Parts 210, 229, and 249
Modernization of the Oil and Gas Reporting Requirements; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, and 249

[Release Nos. 33–8935; 34–58030; File No. S7–15–08]

RIN 3235–AK00

Modernization of the Oil and Gas Reporting Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing revisions to its oil and gas reporting requirements which exist in their current form in Regulation S–K and Regulation S–X under the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as Industry Guide 2. The revisions are intended to provide investors with a more meaningful and comprehensive understanding of oil and gas reserves, which should help investors evaluate the relative value of oil and gas companies. In the three decades that have passed since adoption of these requirements, there have been significant changes in the oil and gas industry. The proposed amendments are designed to modernize and update the oil and gas disclosure requirements to align them with current practices and changes in technology. The proposed amendments would also codify Industry Guide 2 in Regulation S–K, with several additions to, and deletions of, current Industry Guide items. They would further harmonize oil and gas disclosures by foreign private issuers with the proposed disclosures for domestic issuers.

DATES: Comments should be received on or before September 8, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–15–08 on the subject line; or
- Use the Federal e-Rulemaking portal *http://www.regulations.gov*. Follow the instructions for submitting comments.

Paper Comments

- Send paper submissions in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/concept.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Questions on this Proposing Release should be directed to Ray Be, Special Counsel, Office of Rulemaking at (202) 551–3430; Mellissa Campbell Duru, Attorney-Advisor, Dr. W. John Lee, Academic Petroleum Engineering Fellow, or Brad Skinner, Senior Assistant Chief Accountant, Office of Natural Resources and Food at (202) 551–3740; Leslie Overton, Associate Chief Accountant, Office of Chief Accountant for the Division of Corporation Finance at (202) 551–3400, Division of Corporation Finance; or Mark Mahar, Associate Chief Accountant, or Jonathan Duersch, Assistant Chief Accountant, Office of the Chief Accountant at (202) 551–5300; U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 4–10 [1] of Regulation S–X [2] and Items 102, 801 and 802 [3] of Regulation S–K.[4] We also propose to add new Subpart 1200, including Items 1201 through 1209, to Regulation S–K.

Table of Contents

[1] 17 CFR 210.4–10.

[2] 17 CFR 210.

[3] 17 CFR 229.102, 17 CFR 229.801, and 17 CFR 229.802.

[4] 17 CFR 229.

I. Introduction

A. Background

On December 12, 2007, the Commission published a Concept Release on possible revisions to the disclosure requirements relating to oil and gas reserves.[5] The release solicited comment on the oil and gas reserves disclosure requirements specified in Rule 4–10 of Regulation S–X[6] and Item 102 of Regulation S–K.[7] The Commission adopted these disclosure requirements in 1978 and 1982, respectively.[8] Since that time, there have been significant changes in the oil and gas industry and markets, including technological advances, and changes in the types of projects in which oil and gas companies invest their capital.[9] Prior to our issuance of the Concept Release, many industry participants had expressed concern that our disclosure rules are no longer in alignment with current industry practices and therefore have limited usefulness to the market and investors.[10]

B. Issuance of the Concept Release

The Concept Release addressed the potential implications for the quality, accuracy and reliability of oil and gas disclosure if the Commission were to:

- Revise the definition of ''proved reserves'' in our rules, in particular, the criteria used to assess and measure resources that can be classified as proved reserves; and
- Expand the categories of resources that may be disclosed in Commission filings to include resources other than proved reserves.

In addition, the Concept Release questioned whether our revised disclosure rules should be modeled on any particular resource classification framework currently being used within the oil and gas industry. We also asked how any revised disclosure rules could be made flexible enough to address future technological innovation and changes within the oil and gas industry. The Concept Release sought further comment on whether the Commission should require independent third party assessments of reserves estimates that a company includes in its filings.

In response to the Concept Release, commenters submitted 80 comment letters which addressed all or some of the 15 questions that were raised by the release.[11] We received comment letters from a variety of industry participants such as accounting firms, consultants, domestic and foreign oil and gas companies, federal government agencies, individuals, law firms, professional associations, public interest groups, and rating agencies.

C. General Overview of the Comment Letters Received on Key Issues

Almost all commenters supported some form of revision to the current oil and gas disclosure requirements, particularly given the length of time that has elapsed since the requirements were initially adopted. Commenters diverged significantly, however, in their views about the extent and type of revisions that we should make to our disclosure system. For example, commenters expressed varied opinions regarding whether we should adopt revisions that would result in a principles-based disclosure regime rather than a rules-based disclosure regime. Those who favored a principles-based approach noted that such an approach would be inherently more flexible than a rules-based approach and would allow for greater adaptability as technological advancements and changes occur in the industry.[12] Other commenters, however,

[5] See Release No. 33–8870 (Dec. 12, 2007) [72 FR 71610].

[6] 17 CFR 210.4–10. See Release No. 33–6233 (Sept. 25, 1980) [45 FR 63660] (adopting amendments to Regulation S–X, including Rule 4–10). The precursor to Rule 4–10 was Rule 3–18 of Regulation S–X, which was adopted in 1978. See Accounting Series Release No. 253 (Aug. 31, 1978) [43 FR 40688]. See also Accounting Series Release No. 257 (Dec. 19, 1978) [43 FR 60404] (further amending Rule 3–18 of Regulation S–X and revising the definition of proved reserves).

[7] Item 102 of Regulation S–K [17 CFR 229.102]. In 1982, the Commission adopted Item 102 of Regulation S–K. Item 102 contains the disclosure requirements previously located in Item 2 of Regulation S–K. See Release No. 33–6383 (March 16, 1982) [47 FR 11380]. The Commission also ''recast * * * the disclosure requirements for oil and gas operations, formerly contained in Item 2(b) of Regulation S–K, as an industry guide.'' See Release No. 33–6384 (Mar. 16, 1982) [47 FR 11476].

[8] The disclosure requirements were introduced pursuant to a directive in the Energy Policy and Conservation Act of 1975 (the ''EPCA''). The EPCA directed the Commission to ''take such steps as may be necessary to assure the development and observance of accounting practices to be followed in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States.'' See 42 U.S.C. 6201–6422.

[9] See, for example, Daniel Yergin and David Hobbs: ''The Search for Reasonable Certainty in Reserves Disclosure,'' Oil and Gas Journal (July 18, 2005).

[10] See, for example, Greg Courturier, ''Standard & Poor's Urges SEC to Change Disclosure Rules,'' International Oil Daily (Dec. 3, 2007); Steve Levine, ''Tracking the Numbers: Oil Firms Want SEC to Loosen Reserves Rules,'' Wall Street Journal Online (Feb. 7, 2006); Christopher Hope, ''Oil Majors Back Attack on SEC Rules,'' The Daily Telegraph (London) (Feb. 24, 2005); Barrie McKenna, ''Rules undervalue reserves report says: Volumes buried in Canada's oil sands not counted by SEC's measure,'' The Globe & Mail (Canada) (Feb. 24, 2005); and ''Deloitte Calls on Regulators to Update Rules for Oil and Gas Reserves Reporting,'' Business Wire Inc. (Feb. 9, 2005).

[11] The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F St. NE., Washington, DC 20549 in File No. S7–29–07. They are also available on-line at *http://www.sec.gov/comments/s7–29–07/s72907.shtml.*

[12] See, for example, letters from BHP Biliton Petroleum (''BHP''), John R. Etherington (''J. Etherington''), and White & Case, LLP (''White & Case'').

expressed concern that a principles-based model is more subjective than a rules-based approach and could result in less consistent and comparable disclosure in the filings made by oil and gas companies.[13]

Virtually all of the commenters supported a revision of the definition of proved reserves in some form or another. Most remarked that the definition of proved reserves should be broadened to allow unconventional resources such as oil shales and bitumen to be classified as proved reserves.[14] In addition, while commenters were split on the use of a single fiscal year-end spot price to value the reserves held by an oil and gas company, a majority advocated the use of a different pricing standard to reduce the effects of short-term price volatility.[15]

There were mixed views on whether the Commission should permit disclosure of reserves other than proved reserves in Commission filings. Commenters supporting the inclusion of disclosures about probable and possible reserves in Commission filings suggested that such disclosure would allow investors to gain a more comprehensive understanding of the resources held by an oil and gas company.[16] Commenters opposing disclosure of probable and possible reserves thought that disclosure about these reserves categories would be less reliable than disclosure about proved reserves. Many of these commenters were concerned about liability issues associated with such disclosure and the loss of comparability of disclosure between companies.[17]

Several of the comment letters addressed whether third parties should be required to independently evaluate the reserves reported by a company in its filings. There was a divergence in opinion on this issue. Some commenters suggested that an evaluation requirement is necessary to ensure the reliability of the reserves disclosure included in companies' filings.[18] Other commenters, however, believed that a company's internal staff is often in the best position to accurately evaluate the reserves of the company.[19] Some of the commenters that opposed a third-party evaluation requirement noted that there likely would be practical impediments to establishing that type of requirement, such as the lack of availability of qualified professionals to perform the evaluations and the lack of a regulatory or professional body to enforce universal standards that would govern the activities of third-party reserves evaluators or auditors.[20]

Finally, numerous commenters expressed support for the adoption of an alternate resource classification system that would allow for disclosure of a wider range of reserves and resources in Commission filings. Most of these commenters advocated the use of the Petroleum Resources Management System (PRMS) for this purpose.[21] PRMS was prepared in 2007 by the oil and gas reserves committee of the Society of Petroleum Engineers and jointly sponsored by the World Petroleum Council, the American Association of Petroleum Geologists and the Society of Petroleum Evaluation Engineers.[22] Other commenters proposed that we consider the rules adopted by regulators in Canada or the resource classification framework currently being created under the auspices of the United Nations Economic Commission for Europe and the United Nations Economic and Social Council in revising our rules.[23] We address the public comments on specific issues in more detail in the relevant sections below.

II. Revisions and Additions to the Definition Section in Rule 4–10 of Regulation S–X

A. Introduction

The proposed revisions and additions to the definition section in Rule 4–10 of Regulation S–X would update our reserves definitions to reflect changes in the oil and gas industry and markets and new technologies that have occurred in the decades since the current rules were adopted. Among other things, the proposed revisions to these definitions address three issues that have been of particular interest to companies, investors, and securities analysts:

- The exclusion of activities related to the extraction of bitumen and other ''non-traditional'' resources from the definition of oil and gas producing activities;
- The limitations regarding the types of technologies that an oil and gas company may rely upon to establish the levels of certainty required to classify reserves; and
- The limitation in the current rules that permits oil and gas companies to disclose only their proved reserves.

In addition, the proposed revisions would change the use of single-day year-end pricing to determine economic producibility of oil and gas reserves. The proposed revisions of, and

[13] See, for example, letters from Apache Corp. (''Apache''), Moody's Investor's Service (''Moody's) and Oil Change International and the Center for Corporate Policy (''Oil Change'').

[14] See letters from American Association of Petroleum Geologists (''AAPG''), American Clean Skies Foundation (''ACSF''), Apache, American Petroleum Institute (''API''), Center for Audit Quality (''Audit Quality''), BP Plc (''BP,'') Brookwood Petroleum Advisors Ltd. (''Brookwood''), CFA Institute Centre for Financial Market Integrity (''CFA''), Chesapeake Energy Corporation (''Chesapeake''), China National Offshore Oil Corporation (''CNOCC''), CIBC World Markets (''CIBC''), Denbury Resources (''Denbury''), Department of Energy (''DOE''), Deutsche Bank, Devon Energy Corporation (''Devon''), EnCana, Energy Information Administration (of DOE) (''EIA''), Energy Literacy Project (''Energy Literacy''), Eni S.p.A. (''Eni''), Ernst & Young (''E&Y''), J. Etherington, ExxonMobil, Grant Thornton, Imperial Oil Ltd. (''Imperial''), Independent Petroleum Association of America (''IPAA''), Dan Kelly (''D. Kelly''), McBride, Douglas-Morningstar Consultants (''D. McBride''), Moody's, Nexen Inc. (''Nexen''), Oil Change, Dan Olds (''D. Olds''), Petrobras, Petro-Canada, PriceWaterhouseCoopers (''PWC''), Robert Pinkerton (''R. Pinkerton''), Robinson Petroleum Consulting (''Robinson''), Ross Petroleum Ltd. (''Ross''), Derek Ryder (''D. Ryder''), Sasol Ltd (''Sasol''), Shell International (''Shell''), Society of Petroleum Engineers (''SPE''), Standard & Poor's (''S&P''), StatoilHydro, Total, S.A. (''Total''), Ashish Verma (''A. Verma''), Robert Wagner (''R. Wagner''), White & Case, and Fred Ziehe (''F. Ziehe'').

[15] See letters from Chesapeake, Devon, and Imperial.

[16] See, for example, letters from Chesapeake, Oil Change, D. Olds, Ross, D. Ryder, and R. Wagner.

[17] See, for example, letters from Hugh Anderson (''H. Anderson''), Apache, API, ExxonMobil, Imperial, and Shell.

[18] See letters from Fitch Ratings (''Fitch'') and White & Case.

[19] See letters from API, Denbury, ExxonMobil, Imperial, Nexen, Shell, and Talisman Energy (''Talisman'').

[20] See, for example, letters from the AAPG, API, Devon, and R. Wagner.

[21] See comment letters from the API, Deloitte & Touche, LLP (''D&T''), DOE, ExxonMobil and Netherland, Sewell & Associates (''Netherland''). The Petroleum Resources Management System classification system defines a broad range of reserves categories, contingent resources and prospective resources. See Society of Petroleum Engineers, the World Petroleum Council, American Association of Petroleum Geologists, and the Society of Petroleum Evaluation Engineers, *Petroleum Resources Management System*, SPE/WPC/AAPG/SPEE (2007).

[22] See letters from AAPG, SPE, and the Society of Petroleum Evaluation Engineers (''SPEE''). See also Petroleum *Resources Management System*, SPE/WPC/AAPG/SPEE (2007).

[23] See letters from Devon, Robinson, and White & Case. The Canadian system is outlined in National Instrument 51–101, ''Standards of Disclosure for Oil and Gas Activities,'' and the related ''Canadian Oil and Gas Evaluation Handbook.'' See *http://www.albertasecurities.com/securitieslaw/Regulatory%20Instruments/5/2232/AMENDED%20NI%2051–101%20_FULL%20VERSION_.pdf.* The United Nations Economic Commission for Europe and the United Nations Economic and Social Council are working together to establish an international classification system to classify resources in both the oil and gas and mining industries. See United Nations Framework Classification System for Fossil Energy and Mineral Resources, United Nations Economic Council For Europe (March, 2006) available at *http://www.unece.org/ie/se/pdfs/UNFC/UNFCemr.pdf.*

additions to, the Rule 4–10 definitions attempt to address these issues without sacrificing clarity and comparability, which provide protection and transparency to investors.

Many commenters on the Concept Release suggested that we adopt the PRMS definitions and classification system to the greatest extent possible.[24] They noted that PRMS is rapidly becoming the leading standard for international petroleum resources classifications. Others suggested that we adopt the definitions and classifications used in Canadian National Instrument 51–101 (NI 51–101), adopted in 2003, because they have been tested in practice as part of a regulatory framework and because they are broadly consistent with PRMS.[25]

We have based many of our proposed new and revised definitions classifications on both PRMS and NI 51–101. The language in NI 51–101 lends itself to a regulatory framework more easily than the language in PRMS, which is primarily a management tool, and we have been guided by the language in NI 51–101 in several instances. Although the proposed definitions are not totally consistent with either PRMS or NI 51–101, they are significantly more consistent with those standards than our existing rules.

One important difference between the proposed amendments and PRMS or NI 51–101 is that the proposed amendments would continue to require the use of historical prices and costs used to promote comparability. In contrast, NI 51–101 and PRMS afford a reserves estimator more flexibility in choosing among alternative pricing schedules. While this flexibility has its benefits, it impedes comparability of different companies' disclosures. Another significant difference is that the proposed amendments, like the current rules, would require reserves to be ''economically producible,'' meaning that estimated revenues must exceed costs, whereas other classification systems require an extractive project to be ''commercial,'' meaning that a company's investment evaluation guidelines must be met (for example, the extraction project rate of return must exceed some prescribed minimum). There are many different investment evaluation guidelines in use today. However, we believe that our proposed criteria would provide greater comparability among companies' disclosures so that investors can better understand the relative merits of their different investment choices.

In addition, NI 51–101 and PRMS provide definitions of various categories of resources beyond reserves, such as contingent and prospective resources, whereas our proposed rules do not. Given that we are not proposing to allow disclosure of resources that do not qualify as reserves in Commission filings, we are not proposing definitions of other various classifications of resources.

After considering the comments received on the Concept Release, we are proposing to revise the definition of proved reserves. Furthermore, as a result of those changes and also observations made by commenters, we are proposing to revise associated definitions and the disclosures made by issuers regarding the extent, characteristics, and location of their reserves.

B. Year-End Pricing

1. 12-Month Average Price

Most commenters on the Concept Release recommended that we replace our current use of a single-day, fiscal year-end spot price to determine whether resources are economically producible based on current economic conditions with a different test.[26] Some believed that reliance on a single-day spot price is subject to significant volatility and results in frequent adjustment of reserves.[27] These commenters expressed the view that variations in single-day prices provide temporary alterations in reserve quantities that are not meaningful or may lead investors to incorrect conclusions, do not represent the general price trend, and do not provide a meaningful basis for determination of reserve or enterprise value.[28]

Of those who commented on this issue, most recommended using a 12-month average price instead of the single-day price.[29] However, others recommended using one of the following alternative pricing options:

- A futures price or the average futures price over a specified period of time;[30]
- Management's forecasted price;[31]
- Average price over three months;[32]
- Average price over two years;[33] or
- Probabilistic future pricing with ranges and explanations for the pricing basis.[34]

Each of the options above, involving historical price averages, futures prices, futures price averages, and price forecasts developed, or relied on, by management, has advantages and disadvantages. For example, historical price averages provide a high level of comparability among oil and gas companies and are relatively easy to compute because the underlying data is readily available to companies. However, they may not reflect the prices that a company could reasonably expect to receive for its production in the future.

Prices based on oil and gas futures are forward-looking, and therefore may better approximate the economic value of the reserves as they are ultimately produced and sold. These prices, however, are not necessarily available for all products in all geographic areas and would require adjustments. To provide comparability of disclosures among oil and gas companies, we likely would have to specify certain private-sector publications for use in such pricing. Price forecasts developed by management of an oil and gas company would provide investors with better insight into the prices that management of the company foresees and, therefore, the prices upon which management

[24] See letters from API, BHP, Brookwood, CFA, China National Offshore Oil Corporation (''CNOOC''), CIBC World Markets (''CIBC''), D&T, Deutsche Bank, DOE, EIA, EnCana, Energy Literacy, Eni, ExxonMobil, Netherland, Newfield Exoploration (''Newfield''), D. Olds, Petrobras, Petro-Canada, Questar Market Resources (''Questar''), Sasol, Shell, Leigh Ann Smothers (''L. Smothers''), SPE, SPEE, Talisman, Total, TRACS International (''TRACS''), Ultra Petroleum Corporation (''Ultra''), White & Case, and Geoff Zakaib (''G. Zakaib'').

[25] See letters from Devon, Robinson, and White & Case. NI 51–101 constitutes the Canadian regulatory system for oil and gas company disclosures.

[26] See letters from AAPG, American Clean Skies Foundation (''ACSF''), H. Anderson, Apache, API, BHP, BP, Brookwood, Canadian Association of Petroleum Producers (''CAPP''), CFA, Chesapeake, CIBC CNOOC, Davis Family Energy Partners (''Davis''), Denbury, Deutsche Bank, Devon, EIA, EnCana, Energy Literacy, Eni, Etherington, J., ExxonMobil, Grant Thornton, Imperial, IPAA, Robbin Jones (''R. Jones''), D. Kelly, Long Consultants (''Long''), D. McBride, MIT Center for Energy and Environmental Policy Research (''MIT''), Moody's, Netherland, Newfield, Nexen, D. Olds, Oil Change, Petrobras, Petro-Canada, Robinson, Ross, D. Ryder, S&P, Sasol, Shell, Southwestern, SPE, StatoilHydro, Total, TRACS, Ultra, Walter van de Vijver (''W. van DeVijver''), R. Wagner, White & Case, and F. Ziehe.

[27] See letters from API, Chesapeake, CIBC, ExxonMobil, Imperial, R. Jones, S&P, Ultra, and R. Wagner.

[28] See letters from Chesapeake, Devon, and Imperial.

[29] See letters from H. Anderson, Apache, API, BHP, BP, CAPP, Chesapeake, CIBC, CNOOC, Devon, DOE, EnCana, Eni, ExxonMobil Imperial, IPAA, R. Jones, D. McBride, Moody's, Netherland, Nexen, Oil Change, D. Olds, Petro-Canada, D. Ryder, Shell, StatoilHydro, Total, TRACS, R. Wagner, and F. Ziehe.

[30] See letters from Apache, CFA, Chesapeake, Davis, EIA, IPAA, Southwestern, StatoilHydro, and TRACS.

[31] See letters from AAPG, J. Etherington, Grant Thornton, Robinson, Ross, StatoilHydro, and W. van de Vijver.

[32] See letter from CFA.

[33] See letter from Deutsche Bank.

[34] See letter from Energy Literacy.

bases its investment and operating decisions, but may provide limited comparability between companies.

We propose to revise the definitions in Rule 4–10 of Regulation S-X to change the price used in calculating reserves from a single-day closing price measured on the last day of the company's fiscal year to an average price for the 12 months prior to the end of the company's fiscal year.[35] This pricing standard is consistent with the PRMS's default guidelines for the term ''current economic conditions.'' This price would be calculated as the unweighted arithmetic average of the closing price on the last day of each month in that 12-month period. Using historical pricing maximizes comparability between companies, which is the primary objective of the oil and gas disclosure. This proposal is intended to maintain reserves disclosure comparability while mitigating the risk that an anomalous single pricing date will distort the proved reserves estimates. It therefore may provide a better basis for economic producibility than single-day pricing.

We recognize that use of historical pricing may not capture management's outlook on the future as well as futures prices or management's planning prices. As noted in detail elsewhere in this release,[36] in order to allow for such disclosures, we are proposing to add a disclosure item that would specifically permit an oil and gas company, at its option, to include a sensitivity case analysis in its filings that would show total reserves estimates based on futures prices, management's planning prices, or other price schedules in addition to the pricing mechanism specifically required.[37]

Request for Comment

- Should the economic producibility of a company's oil and gas reserves be based on a 12-month historical average price? Should we consider an historical average price over a shorter period of time, such as three, six, or nine months? Should we consider a longer period of time, such as two years? If so, why?
- Should we require a different pricing method? Should we require the use of futures prices instead of historical prices? Is there enough information on futures prices and appropriate differentials for all products in all geographic areas to provide sufficient reporting consistency and comparability?
- Should the average price be calculated based on the prices on the last day of each month during the 12-month period, as proposed? Is there another method to calculate the price that would be more representative of the 12-month average, such as prices on the first day of each month? Why would such a method be preferable?
- Should we require, rather than merely permit, disclosure based on several different pricing methods? If so, which different methods should we require?
- Should we require a different price, or supplemental disclosure, if circumstances indicate a consistent trend in prices, such as if prices at year-end are materially above or below the average price for that year? If so, should we specify the particular circumstances that would trigger such disclosure, such as a 10%, 20%, or 30% differential between the average price and the year-end price? If so, what circumstances should we specify?

2. Trailing Year-End

Numerous commenters recommended the use of an average price over a period ending some time before the company's fiscal year end.[38] They noted that, with accelerated filing deadlines, it becomes difficult for the larger companies subject to those deadlines to make the required calculations accurately and with the best available data.[39] Most of these commenters recommended that the pricing period end three months prior to the end of the company's fiscal year (for example, a company with a December 31, 2007 fiscal year end, would use the average historical price for the period between October 1, 2006 and September 30, 2007 to calculate its reserves estimates).[40] We are not proposing such a lag in the time between the close of the pricing period and the end of the fiscal year. However, we solicit comment on this issue.

Request for Comment

- Should the price used to determine the economic producibility of oil and gas reserves be based on a time period other than the fiscal year, as some commenters have suggested? If so, how would such pricing be useful? Would the use of a pricing period other than the fiscal year be misleading to investors?
- Is a lag time between the close of the pricing period and the end of the company's fiscal year necessary? If so, should the pricing period close one month, two months, three months, or more before the end of the fiscal year? Explain why a particular lag time is preferable or necessary. Do accelerated filing deadlines for the periodic reports of larger companies justify using a pricing period ending before the fiscal year end?

3. Prices Used for Accounting Purposes

Notwithstanding our proposal to change the single-day, year-end pricing for the estimation of reserves, we are not proposing to change the prices that are used for accounting purposes. Specifically, companies using either the successful efforts accounting method described in Statement of Financial Accounting Standard No. 19 (SFAS 19) prescribed by the Financial Accounting Standards Board (FASB) or the full cost accounting method, set forth in Rule 4–10(c)[41] of Regulation S–X, would continue to depreciate property, plant, and equipment related to oil and gas producing activities using a units-of-production basis over proved developed reserves or proved reserves, as applicable, using single-day, year-end rates. In addition, companies using the full cost accounting method would continue to use the single-day, year-end rate for purposes of determining the limitation on capitalized costs (*i.e.*, the ceiling test).

However, to provide consistency between the reserves disclosures required by proposed new Subpart 1200 and SFAS 69, we believe that the information required by SFAS 69 should be prepared using the average price as described above. This would result in two different presentations of proved reserves using two different economic producibility assumptions. For purposes of Subpart 1200, a company would use a value for proved reserves based on average prices. Conversely, for purposes of applying the successful efforts method and the full cost accounting method, a company would use a value of proved reserves based on a single-day, year-end price. We intend to discuss such possible changes with FASB.

Request for Comment

- Should we require companies to use the same prices for accounting purposes as for disclosure outside of the financial statements?

[35] See proposed Rule 4–10(a)(24)(v).

[36] See Section III.B.3.ii of this release.

[37] See proposed Item 1202(c).

[38] See letters from AAPG, API, BP, CAPP, CIBC, Deutsche Bank, EnCana, Eni, ExxonMobil, Imperial, D. McBride, Moody's Netherland, Nexen, D. Ryder, Shell, Total, R. Wagner, and F. Ziehe.

[39] See letters from CAPP and Shell.

[40] See letters from AAPG, API, BP, CAPP, CIBC, Deutsche Bank, EnCana, Eni, ExxonMobil, Imperial, D. McBride, Moody's, Netherland, Nexen, D. Ryder, Shell, Total, R. Wagner, and F. Ziehe.

[41] 17 CFR 210.4–10(c).

• Is there a basis to continue to treat companies using the full cost accounting method differently from companies using the successful efforts accounting method? For example, should we require, or allow, a company using the successful efforts accounting method to use an average price but require companies using the full cost accounting method to use a single-day, year-end price?

• Should we require companies using the full cost accounting method to use a single-day, year-end price to calculate the limitation on capitalized costs under that accounting method, as proposed? If such a company were to use an average price and prices are higher than the average at year end or at the time the company issues its financial statements, should that company be required to record an impairment charge?

• Should the disclosures required by SFAS 69 be prepared based on different prices than the disclosures required by proposed Section 1200?

• If proved reserves, for purposes of disclosure outside of the financial statements, other than supplemental information provided pursuant to SFAS 69, are defined differently from reserves for purposes of determining depreciation, should we require disclosure of that fact, including quantification of the difference, if the effect on depreciation is material?

• What concerns would be raised by rules that require the use of different prices for accounting and disclosure purposes? For example, is it consistent to use an average price to estimate the amount of reserves, but then apply a single-day price to calculate the ceiling test under the full cost accounting method? Would companies have sufficient time to prepare separate reserves estimates for purposes of reserves disclosure on one hand, and calculation of depreciation on the other? Would such a requirement impose an unnecessary burden on companies?

• Will our proposed change to the definitions of proved reserves and proved developed reserves for accounting purposes have an impact on current depreciation amounts or net income and to what degree?

• If we change the definitions of proved reserves and proved developed reserves to use average pricing for accounting purposes, what would be the impact of that change on current depreciation amounts and on the ceiling test? Would the differences be significant?

C. Extraction of Bitumen and Other Non-Traditional Resources

Our current definition of ''oil and gas producing activities'' explicitly excludes sources of oil and gas from ''non-traditional'' or ''unconventional'' sources, that is, sources that involve extraction by means other than ''traditional'' oil and gas wells.[42] These other sources include bitumen extracted from oil sands, as well as oil and gas extracted from coalbeds and shales, even though some of these resources are sometimes extracted through wells, as opposed to mining and surface processing. However, such sources are increasingly providing energy resources to the world due in part to advancements in extraction and processing technology.[43] As noted earlier, many commenters supported such disclosure.[44]

The proposed revised definition of ''oil and gas producing activities'' would include the extraction of the non-traditional resources described above.[45] The proposal is intended to shift the focus of the definition of oil and gas producing activities to the final product of such activities, regardless of the extraction technology used. The proposed definition would state specifically that oil and gas producing activities include the extraction of marketable hydrocarbons, in the solid, liquid, or gaseous state, from oil sands, shale, coalbeds[46] or other nonrenewable natural resources which can be upgraded into natural or synthetic oil or gas, and activities undertaken with a view to such extraction.

However, the proposed definition would continue to exclude activities relating to:

• Transporting, refining, processing (other than field processing of gas to extract liquid hydrocarbons), or marketing oil and gas;

• The production of natural resources other than oil, gas, or natural resources from which natural or synthetic oil and gas can be extracted; and

• The production of geothermal steam.

Consistent with historical treatment, we continue to believe that, once a resource is extracted from the ground, it should not be considered oil and gas reserves. Thus, the current definition of the term ''oil and gas producing activities'' does not, and the proposed definition would not, permit companies that only transport, process, and/or market oil or gas to disclose, as reserves, amounts of oil or gas received from, and extracted from the ground by, another company. In addition, if a company extracting the resources also builds its own processing plant on-site or near the extraction location (other than field processing of gas to extract liquid hydrocarbons), we do not believe it would be appropriate for that company to use the price of its processed product to determine the economic producibility of the unprocessed product. For example, if a company builds a bitumen processing plant to convert raw bitumen into synthetic crude oil, its calculation for the economic producibility of reserves from that location should be based on the prices for the raw bitumen, as though it were providing the bitumen to a third party processor. This will facilitate comparability among companies.

We recognize, however, that excluding the listed activities from the definition of ''oil and gas producing activities'' would not permit a company to reflect the result of building its own processing plant on the price estimates and other considerations that may be used in making the company's business decisions. Such a processing plant can significantly enhance the value of the upgraded product, enabling the company to use lower costs (or higher prices) in its internal decision-making. As noted elsewhere in this release, we are proposing to allow companies to voluntarily present an analysis of the sensitivity of reserves estimates based on varying prices, including the expected product prices used by management for its own planning purposes.[47] Such supplemental disclosure would permit companies to disclose other pricing and cost considerations, including advantages gained by internal processing of raw

[42] See 17 CFR 210.4–10(a)(1)(ii)(D).

[43] According to one commenter, some estimates indicate that such resources already provide 40% of the natural gas produced in the United States. See letter from Chesapeake Energy.

[44] See letters from AAPG, ACSF, Apache, API, Audit Quality, BP, Brookwood, CFA, Chesapeake, CIBC, CNOOC, Denbury, Deutsche Bank, Devon, DOE, EIA, EnCana, Energy Literacy, Eni, J. Etherington, ExxonMobil, E&Y, Grant Thornton, Imperial, IPAA, D. Kelly, D. McBride, Moody's, Nexen, Oil Change, D. Olds, Petrobras, Petro-Canada, R. Pinkerton, PWC, Robinson, Ross, D. Ryder, S&P, Sasol, Shell, SPE, StatoilHydro, Total, A. Verma, R. Wagner, White & Case, and F. Ziehe.

[45] See proposed Rule 4–10(a)(16).

[46] Although the proposed definition would encompass activities such as extracting coalbed methane from a deposit of coal, it would not include the extraction of the coal itself, even if the company intends to use that coal as feedstock into processing activities that result in oil and gas products, such as coal gasification. We recognize that as technologies progress, it may become appropriate to include such processes as oil and gas producing activities.

[47] See proposed Item 1202(c).

products that may add value to the final product sold by the company.

Request for Comment

• Should we consider the extraction of bitumen from oil sands, extraction of synthetic oil from oil shales, and production of natural gas and synthetic oil and gas from coalbeds to be considered oil and gas producing activities, as proposed? Are there other non-traditional resources whose extraction should be considered oil and gas producing activities? If so, why?

• The extraction of coal raises issues because it is most often used directly as mined fuel, although hydrocarbons can be extracted from it. As noted above, we propose to include the extraction of coalbed methane as an oil and gas producing activity. However, the actual mining of coal has traditionally been viewed as a mining activity. In most cases, extracted coal is used as feedstock for energy production rather than refined further to extract hydrocarbons. However, as technologies progress, certain processes to extract hydrocarbons from extracted coal, such as coal gasification, may become more prevalent. Applying rules to coal based on the ultimate use of the resource could lead to different disclosure and accounting implications for similar coal mining companies based solely on the coal's end use. How should we address these concerns? Should all coal extraction be considered an oil and gas producing activity? Should it all be considered mining activity? Should the treatment be based on the end use of the coal? Please provide a detailed explanation for your comments.

• Similar issues could arise regarding oil shales, although to a significantly less extent, because those resources currently are used as direct fuel only in limited applications. How should we treat the extraction of oil shales?

• If adopted, how would the proposed changes affect the financial statements of producers of non-traditional resources and mining producers?

D. Reasonable Certainty and Proved Oil and Gas Reserves

The current definition of the term ''proved reserves'' states that these reserves are ''the estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions.'' [48] Although ''reasonable certainty'' is, and has been, the standard used in the definition of proved oil and gas reserves, the current rules do not define that term. As a result, the meaning of the term ''reasonable certainty'' has been the subject of significant disagreement within the industry relating to the level of probability necessary to meet this standard. Although some believe that this standard is clear and has established a consistent guideline for establishing proved reserves,[49] others do not believe that this has been the case.[50] To avoid ambiguity, we propose to add a definition of the term ''reasonable certainty'' to Rule 4–10 of Regulation S–X.[51]

We propose to define the term ''reasonable certainty'' as ''much more likely to be achieved than not.'' In addition, we would clarify that, when deterministic methods [52] are used to estimate oil and gas reserves, as changes due to increased availability of geoscience (geological, geophysical, and geochemical), engineering, and economic data are made to estimated ultimate recovery (EUR) [53] with time, reasonably certain EUR is much more likely to increase than to either decrease or remain constant. The proposed definition also would explain that, when probabilistic methods are used to estimate reserves, reasonable certainty means that there is at least a 90% probability that the quantities actually recovered will equal or exceed the stated volume.[54]

Request for Comment

• Is the proposed definition of ''reasonable certainty'' as ''much more likely to be achieved than not'' a clear standard? Is the standard in the proposed definition appropriate? Would a different standard be more appropriate?

• Is the proposed 90% threshold appropriate for defining reasonable certainty when probabilistic methods are used? Should we use another percentage value? If so, what value?

[48] See Rule 4–10(a)(2) of Regulation S–X [17 CFR 210.4–10(a)(2)].

[49] See letters from R. Jones and Moody's.

[50] See letters from D. Olds, Raymond Schutte (''R. Schutte''), L. Smothers, R. Wagner, and Sir Philip Watts (''P. Watts'').

[51] See proposed Rule 4–10(a)(26).

[52] See Section II.D.2 of this release for a discussion regarding deterministic methods and probabilistic methods.

[53] We propose to define the term ''estimated ultimate recovery'' as the sum of reserves remaining as of a given date plus the cumulative production as of that date. See proposed Rule 4–10(a)(11).

[54] This is consistent with the PRMS definition of ''proved reserves.''

1. New Technology

The current rules limit the use of alternative technologies as the basis for determining a company's reserves disclosures. For example, under the current rules, a company generally must use actual production or flow tests to meet the ''reasonable certainty'' standard necessary to establish the proved status of its reserves. However, in the past, the Commission's staff has recognized that flow tests can be impractical in certain areas, such as the Gulf of Mexico, where environmental restrictions effectively prohibit these types of tests. The staff has not objected to disclosure of reserves estimates for these restricted areas using alternative technologies. Some commenters noted that a case-by-case exemption from the flow test requirement imposes unequal standards for establishing reasonable certainty based on geographic location.[55]

In addition, we recognize that technology will continue to develop, improving the quality of information that can be obtained from existing tests and creating entirely new tests that we cannot yet envision. We propose to add a definition of the term ''reliable technology'' to Rule 4–10 of Regulation S–X to clarify the types of technology that can be used to establish reasonable certainty. We propose to define ''reliable technology'' as ''technology (including computational methods) that, when applied using high quality geoscience and engineering data, is widely accepted within the oil and gas industry, has been field tested and has demonstrated consistency and repeatability in the formation being evaluated or in an analogous formation. Consistent with current industry practice, expressed in probabilistic terms, reliable technology has been proved empirically to lead to correct conclusions in 90% or more of its applications.'' [56]

The proposed definition is intended to permit broader use of new technologies to establish the proper classification for reserves and to lessen the need for frequent updates to our reserves definitions as technology continues to evolve. Because companies would now be able to select the technology that it uses, we are proposing to require a company to disclose the technology used to establish the appropriate level of certainty for material properties in a company's first filing with the Commission and for material additions

[55] See letters from Petrobras, D. Ryder, and White & Case.

[56] See proposed Rule 4–10(a)(27).

to reserves estimates in subsequent filings.[57] Such disclosure should identify the particular portion of the reserves estimates for which a particular technology was used, including identification of the geographic area, country, field or basin to the extent necessary for investors to determine whether use of that technology was appropriate under the circumstances.

Request for Comment

- Is our proposed definition of ''reliable technology'' appropriate? Should we change any of its proposed criteria, such as widespread acceptance, consistency, or 90% reliability?
- Is the open-ended type of definition of ''reliable technology'' that we propose appropriate? Would permitting the company to determine which technologies to use to determine their reserves estimates be subject to abuse? Do investors have the capacity to distinguish whether a particular technology is reasonable for use in a particular situation? What are the risks associated with adoption of such a definition?
- Is the proposed disclosure of the technology used to establish the appropriate level of certainty for material properties in a company's first filing with the Commission and for material additions to reserves estimates in subsequent filings appropriate? Should we require disclosure of the technology used for all properties? Should we require companies currently filing reports with the Commission to disclose the technology used to establish appropriate levels of certainty regarding their currently disclosed reserves estimates?

2. Probabilistic Methods

We propose to add definitions of the terms ''deterministic estimate'' and ''probabilistic estimate.'' [58] These two terms relate to the two alternative methods by which a company may estimate its reserves amounts. We understand that both methods are, to varying degrees, currently used by the industry. Our proposed definitions are consistent with industry practice. We propose to define the term ''deterministic estimate'' to mean an estimate that is based on using a single ''most appropriate'' value for each variable in the estimation of reserves, such as the company's determination of the oil or gas in place in a reservoir, multiplied by the fraction of that oil or gas that can be recovered. In addition, we propose to define the term ''probabilistic estimate'' as an estimate that is obtained when the full range of values that could reasonably occur from each unknown parameter (from the geoscience, engineering, and economic data) is used to generate a full range of possible outcomes and their associated probabilities of occurrence. Although companies currently can use either method to produce reserves estimates, we believe that these proposed definitions will promote consistent usage of the terms ''probabilistic estimate'' and ''deterministic estimate.''

Some of the commenters suggested that we require the use of probabilistic estimates to establish proved reserves because these methods are derived through extensive statistical computer calculations using a wide range of potential values for parameters that affect the reserves estimate, such as possible recovery factors for a particular field or type of field, and so would be more rigorous than deterministic methods.[59] Conversely, the quality of an estimate derived through deterministic methods depends more heavily on the experience and judgment of the reserves estimator to select the most appropriate value for those parameters. Although we recognize that probabilistic methods can be useful in certain circumstances, requiring the use of probabilistic estimates could significantly increase the costs of reserves estimate preparation, without significant increases in reliability of the results in many cases. One commenter was concerned that companies may not have sufficient staff to calculate all reserves estimates through probabilistic methods.[60] Thus, the proposed definition of ''reasonable certainty'' would continue to allow companies to estimate reserves amounts using either deterministic or probabilistic methods, leaving companies to determine which method is more appropriate for their particular situations.[61]

Request for Comment

- Are the proposed definitions of ''deterministic estimate'' and ''probabilistic estimate'' appropriate? Should we revise either of these definitions in any way? If so, how?
- Are the statements regarding the use of deterministic and probabilistic estimates in the proposed definition of ''reasonable certainty'' appropriate? Should we change them in any way? If so, how?
- Should an oil and gas company have the choice of using deterministic or probabilistic methods for reserves estimation, or should we require one method? If we were to require a single method, which one should it be? Why? Would there be greater comparability between companies if only one method was used?
- Should we require companies to disclose whether they use deterministic or probabilistic methods for their reserves estimates?

3. Other Revisions Related to Proved Oil and Gas Reserves

The current definition of the term ''proved oil and gas reserves'' also incorporates certain specific concepts such as ''lowest known hydrocarbons'' which limit a company's ability to claim proved reserves in the absence of information on fluid contacts in a well penetration,[62] notwithstanding the existence of other engineering and geoscientific evidence.[63] Consistent with our proposal to permit the use of new technologies to establish the reasonable certainty of proved reserves, the proposed revisions to the definition of ''proved oil and gas reserves'' also include provisions for establishing levels of lowest known hydrocarbons and highest known oil through reliable technology other than well penetrations.

Similarly, the proposed definition would permit a company to claim proved reserves beyond drilling units that immediately offset developed drilling locations if the company can establish with reasonable certainty that these reserves are economically producible.[64] These revisions are designed to permit the use of alternative technologies to establish proved reserves in lieu of requiring companies to use specific tests. In addition, they would establish a uniform standard of reasonable certainty that could be applied to all proved reserves, regardless of location or distance from producing wells.

[57] See proposed Item 1202(a)(4) and proposed Item 1209(a)(2).

[58] See proposed Rules 4–10(a)(6) and (a)(19). These definitions are based on the Canadian Oil and Gas Evaluation Handbook (COGEH). This handbook was developed by the Calgary Chapter of the Society of Petroleum Evaluation Engineers and the Petroleum Society of CIM to establish standards to be used within the Canadian oil and gas industry in evaluating oil and gas reserves and resources.

[59] See letters from AAPG, EIA, Long, D. Olds, Rose, and SPE.

[60] See letter from D. Olds.

[61] See proposed Rule 4–10(a)(26).

[62] In certain circumstances, a well may not penetrate the area at which the oil makes contact with water. In these cases, the company would not have information on the fluid contact and must use other means to estimate the lower boundary depths for the reservoir in which oil is located.

[63] See Rule 4–10(a)(2)(i) [17 CFR 210.4–10(a)(2)(i)].

[64] See proposed Rule 4–10(a)(24)(ii). See Section II.G for a more detailed discussion regarding this proposed revision.

Finally, we propose adding a sentence to the definition that would state that, in order for reserves to be proved, the project to extract the hydrocarbons must have commenced or it must be reasonably certain that the operator will commence the project within a reasonable time. This revision is designed to prevent a company from including, in proved reserves, projects in undeveloped areas for which it does not have the intent to develop.

Request for Comment

- Should we permit the use of technologies that do not provide direct information on fluid contacts to establish reservoir fluid contacts, provided that they meet the definition of ''reliable technology,'' as proposed?
- Should there be other requirements to establish that reserves are proved? For example, for a project to be reasonably certain of implementation, is it necessary for the issuer to demonstrate either that it will be able to finance the project from internal cash flow or that it has secured external financing?

E. Unproved Reserves—''Probable Reserves'' and ''Possible Reserves''

We propose to define the terms ''probable reserves'' and ''possible reserves'' because we are proposing to permit companies to disclose these categories of reserves estimates.[65] When producing an estimate of the amount of oil and gas that is recoverable from a particular reservoir, a company can make three types of estimates:

- An estimate that is reasonably certain;
- An estimate that is as likely as not to be achieved; and
- An estimate that might be achieved, but only under more favorable circumstances than are likely.

These three types of estimates are known in the industry as proved, probable, and possible reserves estimates. By proposing to permit disclosure of all three of these classifications of reserves, our objective is to enable companies to provide investors with more insight into the potential reserves base that managements of companies may use as their basis for decisions to invest in resource development.

Some commenters on the Concept Release were concerned that disclosing reserves categories that are less certain than proved reserves could increase the risk of confusion and litigation.[66] Therefore, we are proposing to make these disclosures voluntary.[67] Numerous oil and gas companies currently disclose unproved reserves on their Web sites and in press releases. This practice does not appear to have created confusion in the market. However, we understand commenters' concerns that probable and possible reserves estimates are less certain than proved reserves estimates and so may create increased litigation risk. By making these disclosures voluntary, a company could decide on its own whether to provide the market with this disclosure, despite possible increased litigation risk. In addition, to address the concerns regarding the uncertainty of estimates of unproved reserves, we also are proposing to require disclosure about the person primarily responsible for preparing the company's reserves estimates and, if applicable, about the person primarily responsible for conducting a reserves audit.[68] The proposal would clarify that a ''person'' may be a business entity or an individual. We address this proposed disclosure in more detail in Section III.B.3.v of this release.

We propose to define the term ''probable reserves'' as those additional reserves that are less certain to be recovered than proved reserves but which, in sum with proved reserves, are as likely as not to be recovered.[69] The proposed definition would provide guidance for the use of both deterministic and probabilistic methods. The proposed definition would clarify that, when deterministic methods are used, it is as likely as not that actual remaining quantities recovered will equal or exceed the sum of estimated proved plus probable reserves. Similarly, when probabilistic methods are used, there should be at least a 50% probability that the actual quantities recovered will equal or exceed the proved plus probable reserves estimates. This proposed definition was derived from the PRMS definition of the term ''probable reserves.''

Our proposed definition of ''possible reserves'' would include those additional reserves that are less certain to be recovered than probable reserves.[70] It would clarify that, when deterministic methods are used, the total quantities ultimately recovered from a project have a low probability to exceed the sum of proved, probable, and possible reserves. When probabilistic methods are used, there should be at least a 10% probability that the actual quantities recovered will equal or exceed the sum of proved, probable, and possible estimates. As with the proposed definition of probable reserves, the proposed definition of possible reserves is based on the PRMS definition of the term ''possible reserves.''

Request for Comment

- Should we permit a company to disclose its probable or possible reserves, as proposed? If so, why?
- Should we require, rather than permit, disclosure of probable or possible reserves? If so why?
- Should we adopt the proposed definitions of probable reserves and possible reserves? Should we make any revisions to those proposed definitions? If so, how should we revise them?
- Are the proposed 50% and 10% probability thresholds appropriate for estimating probable and possible reserves quantities when a company uses probabilistic methods? Should probable reserves have a 60% or 70% probability threshold? Should possible reserves have a 15% or 20% probability threshold? If not, how should we modify them?

F. Definition of ''Proved Developed Oil and Gas Reserves''

As noted above, we are proposing to expand the scope of oil and gas producing activities to include resources extracted by technologies other than traditional oil and gas wells, such as mining processes. Similarly, we propose to expand the definition of the term ''proved developed oil and gas reserves'' to include extraction of resources using technologies other than production through wells.[71] The proposed new definition would state that ''proved developed oil and gas reserves'' are proved reserves that:

- In projects that extract oil and gas through wells, can be expected to be recovered through existing wells with existing equipment and operating methods; and
- In projects that extract oil and gas in other ways, can be expected to be recovered through extraction technology installed and operational at the time of the reserves estimate.

Request for Comment

- Should we revise the definition of proved developed oil and gas reserves, as proposed? Should we make any other revisions to that definition? If so, how should we revise it?

[65] See proposed Rule 4–10(a)(18) and (17), respectively.

[66] See letters from Devon and Imperial.

[67] See proposed Item 1202.

[68] See proposed Item 1202(a)(6).

[69] See proposed Rule 4–10(a)(18).

[70] See proposed Rule 4–10(a)(17).

[71] See proposed Rule 4–10(a)(22).

G. Definition of ''Proved Undeveloped Reserves''

1. Proposed Replacement of Certainty Threshold

We propose to amend the definition of the term ''proved undeveloped reserves'' (PUDs) by replacing the requirement that productivity be ''certain'' for areas beyond the immediate area of known proved reserves with a ''reasonably certain'' requirement.[72] Currently, the definition of the term ''proved undeveloped reserves'' imposes a ''reasonable certainty'' standard for reserves in drilling units immediately adjacent to the drilling unit containing a producing well and a ''certainty'' standard for reserves in drilling units beyond the immediately adjacent drilling units.[73]

Some commenters believed that requiring ''certainty'' beyond offsetting, or adjacent, units is not appropriate.[74] They believed that there should be a single criterion—reasonable certainty—to characterize all proved reserves, including proved undeveloped reserves. Two commenters noted that the offsetting unit requirement is a purely mathematical and arbitrary standard for ease of calculation and does not reflect the actual geological characteristics of the reservoir.[75] Other commenters argued that PUDs should be determined by the totality of the engineering and geoscience data available, including seismic data, appropriate analogs, and assessment of reservoir characteristics.[76] One commenter believed that the ''one offsetting unit'' rule is outdated and does not acknowledge new technology.[77]

The proposed definition would permit the use of evidence gathered from reliable technology that establishes reasonable certainty of economic producibility at any distance from productive units (that is, in units adjacent to the productive units as well as units beyond those adjacent units).[78] It would further clarify that proved reserves can be claimed in a conventional accumulation [79] or a continuous accumulation in a given area beyond immediately offset drilling units where economic producibility is reasonably certain, based on engineering, geoscience, and economic data and reliable technology, including actual drilling statistics in the area.[80] However, the proposed definition would prohibit a company from assigning proved status to undrilled locations if a development plan has not been adopted indicating that the locations are scheduled to be drilled within five years, unless it discloses unusual circumstances that justify a longer time, such as particularly complex projects in remote areas that require more time to develop.[81]

Request for Comment

- Are the proposed revisions appropriate? Would the proposed expansion of the PUDs definition create potential for abuses?
- Should we replace the current ''certainty'' threshold for reserves in drilling units beyond immediately adjacent drilling units with a ''reasonable certainty'' threshold as proposed?
- Is it appropriate to prohibit a company from assigning proved status to undrilled locations if the locations are not scheduled to be drilled more than five years, absent unusual circumstances, as proposed? Should the proposed time period be shorter or longer than five years? Should it be three years? Should it be longer, such as seven or ten years?
- Should the proposed definition specify the types of unusual circumstances that would justify a development schedule longer than five years for reserves that are classified as proved undeveloped reserves?

2. Proposed Definitions for Continuous and Conventional Accumulations

We propose to adopt definitions for the terms ''continuous accumulations'' and ''conventional accumulations'' to assist companies in determining the extent of PUDs associated with these two types of accumulations.[82] PUDs have caused estimation difficulties in the past. The fundamental difficulty in making these estimates is calculating the volume of a resource beyond the immediate area in which wells have been drilled (or beyond the immediate area in which other extraction technology has been installed and is operational) that should be included in the proved category. The answer can be vastly different for continuous accumulations, as opposed to conventional accumulations. Because of this potential difference, we believe that it is important to define these two distinct categories of accumulations in the proposed rules.

The proposed definition of ''continuous accumulations'' would encompass resources that are pervasive throughout large areas, have ill-defined boundaries, and typically lack or are unaffected by hydrocarbon-water contacts near the base of the accumulation.[83] Examples include, but are not limited to, accumulations of natural bitumen (oil sands), gas hydrates, and self-sourced accumulations such as coalbed methane, shale gas, and oil shale deposits. Typically, such accumulations require specialized extraction technology (*e.g.*, removal of water from coalbed methane accumulations, large fracturing programs for shale gas, steam, or solvents to mobilize bitumen for in-situ recovery, and, in some cases, mining activities). Moreover, the extracted petroleum may require significant processing prior to sale (*e.g.*, bitumen upgraders). This proposed definition is based on the PRMS definition of the term ''unconventional resources.''

Conversely, we propose to define ''conventional accumulations'' as discrete oil and gas resources related to localized geological structural features or stratigraphic conditions, with the accumulation typically bounded by a hydrocarbon-water contact near its base, and which are significantly affected by the tendency of lighter hydrocarbons to ''float'' or accumulate above the heavier water.[84] This proposed definition is based on the PRMS definition of the term ''conventional resources.''

Request for Comment

- Should we provide separate definitions of conventional and continuous accumulations, as proposed? Would separate disclosure of these accumulations be helpful to investors?
- Should we revise our proposed definition of ''continuous accumulations'' in any way? For example, should the proposed definition provide examples of such accumulations? If so, how should we revise it?
- Should we revise our proposed definition of ''conventional accumulations'' in any way? If so, how should we revise it?

[72] See proposed Rule 4–10(a)(25).

[73] See 17 CFR 210.4–10(a)(4). A drilling unit refers to the spacing required between wells to prevent wasting resources and optimize recovery. These units are typically determined by the local jurisdiction.

[74] See letters from AAPG, API, Denbury, Devon, and DOE.

[75] See letters from CNOOC and Ultra.

[76] See letters from API, Devon, DOE, and ExxonMobil.

[77] See letter from Ultra.

[78] See proposed Rule 4–10(a)(25)(i).

[79] See Section II.G.2 for a discussion of continuous accumulations and conventional accumulations.

[80] See proposed Rule 4–10(a)(25)(i)(B).

[81] See proposed Rule 4–10(a)(25)(ii).

[82] See proposed Rule 4–10(a)(4) and (a)(5).

[83] See proposed Rule 4–10(a)(4).

[84] See proposed Rule 4–10(a)(5).

3. Proposed Treatment of Improved Recovery Projects

The proposed definition of proved undeveloped reserves also would be broadened to permit a company to include quantities of oil that can be recovered through improved recovery projects in its proved undeveloped reserves estimates. Currently, a company can include such quantities only where techniques have been proved effective by actual production from projects in the area and in the same reservoir. The proposed amendments would expand this definition to permit the use of techniques that have been proved effective by actual production from projects in an analogous reservoir in the same geologic formation in the immediate area or by other evidence using reliable technology that establishes reasonable certainty.[85]

Request for Comment

• Should we expand the definition of proved undeveloped reserves to permit the use of techniques that have been proven effective by actual production from projects in an analogous reservoir in the same geologic formation in the immediate area or by other evidence using reliable technology that establishes reasonable certainty?

H. Proposed Definition of Reserves

To add clarity to the definition of the term ''proved reserves,'' we also propose to add a definition of the term ''reserves.'' [86] We propose to describe more completely the criteria that an accumulation of oil, gas, or related substances must satisfy to be considered reserves (of any classification), including non-technical criteria such as legal rights. We propose to define reserves as the estimated remaining quantities of oil and gas and related substances anticipated to be recoverable, as of a given date, by application of development projects to known accumulations based on:

• Analysis of geoscience and engineering data;
• The use of reliable technology;
• The legal right to produce;
• Installed means of delivering the oil, gas, or related substances to markets, or the permits, financing, and the appropriate level of certainty (reasonable certainty, as likely as not, or possible but unlikely) to do so; and
• Economic producibility at current prices and costs.

The definition would clarify that reserves are classified as proved, probable, and possible according to the degree of uncertainty associated with the estimates. This proposed definition is based on the PRMS definition of the term ''reserves.''

Request for Comment

• Is the proposed definition of ''reserves'' appropriate? Should we change it in any way? If so, how?

I. Other Proposed Definitions and Reorganization of Definitions

We are proposing additional definitions primarily to support and clarify the proposed definitions of the key terms discussed above. These supplementary definitions include:

• ''Analogous formation in the immediate area,'' which appears in the definition of proved reserves; [87]
• ''Condensate'' [88]
• ''Development project'' [89]
• ''Estimated ultimate recovery,'' which appears in the definition of proved reserves; [90] and
• ''Resources,'' which are often confused with reserves.[91]

Most of these supporting terms and their proposed definitions are based on similar terms in the PRMS. The proposed definition of ''resources'' is based on the Canadian Oil and Gas Evaluation Handbook (COGEH).

We also are proposing to alphabetize the definitional terms in Rule 4–10(a), including existing and proposed definitions. Currently, the terms defined in Rule 4–10(a) are organized by placing the key terms ahead of supporting terms. The proposals would significantly increase the number of terms defined in this section. With the proposed addition of numerous new definitions, we believe that alphabetizing these definitions would make specific definitions easier to find.

Request for Comment

• Are these additional proposed definitions appropriate? Should we revise them in any way?
• Are there other terms that we have used in the proposal that need to be defined? If so, which terms and how should we define them?
• Should we alphabetize the definitions, as proposed? Would any undue confusion result from the re-ordering of existing definitions?

III. Proposed Amendments To Codify the Oil and Gas Disclosure Requirements in Regulation S–K

The Concept Release primarily solicited comment on certain key definitions in the oil and gas disclosure regime, and whether oil and gas companies should be permitted to disclose probable and possible reserves. In this release, we are proposing, and soliciting comment on, a broader scope of amendments. In particular, we are proposing to update and codify Securities Act and Exchange Act Industry Guide 2: Disclosure of Oil and Gas Operations (Industry Guide 2).[92] Industry Guide 2 sets forth most of the disclosures that an oil and gas company provides regarding its reserves, production, property, and operations. Regulation S–K references Industry Guide 2 in Instruction 8 to Item 102 (Description of Property), Item 801 (Securities Act Industry Guides), and Item 802 (Exchange Act Industry Guides). However, Industry Guide 2 itself does not appear in Regulation S–K or in the Code of Federal Regulations. We propose to codify the contents of Industry Guide 2 in Regulation S–K.

Included in the proposals are several new disclosure items that we believe are necessary in light of the proposed amendments to the definitions in Rule 4–10, such as disclosure of technology used to determine levels of certainty because we propose to permit companies to choose the appropriate technology for that purpose. We also are proposing to eliminate several disclosures in Industry Guide 2 because we believe that they are no longer necessary, such as reporting of production through processing plant ownership. We address these proposals in detail below.

A. Proposed Revisions to Items 102, 801, and 802 of Regulation S–K

The instructions to Item 102 of Regulation S–K, in conjunction with Items 801 and 802 of Regulation S–K, currently reference the industry guides. Because we are proposing to move the disclosures from Industry Guide 2 into a new Subpart 1200 of Regulation S–K, we propose to revise the instructions to Item 102 to reflect this change.[93] We also propose eliminating the references in Items 801 and 802 to Industry Guide 2 because that industry guide will cease to exist if the proposals described in this release are adopted.[94]

[85] See proposed Rule 4–10(a)(25)(iii).
[86] See proposed Rule 4–10(a)(28).
[87] See proposed Rule 4–10(a)(2).
[88] See proposed Rule 4–10(a)(3).
[89] See proposed Rule 4–10(a)(8).
[90] See proposed Rule 4–10(a)(11).
[91] See proposed Rule 4–10(a)(30).
[92] Exchange Act Industry Guide 2 merely references, and therefore is identifical to, Securities Act Industry Guide 2.
[93] See proposed Instructions 4 and 8 to Item 102.
[94] See proposed Item 801 and 802.

In addition, Instruction 5 to Item 102 of Regulation S-K currently prohibits the disclosure of reserves other than proved oil and gas reserves. Because we are proposing to permit disclosure of probable and possible oil and gas reserves, we would revise Instruction 5 to limit its applicability to extractive enterprises other than oil and gas producing activities, such as mining activities.[95] Similarly, Instruction 3 of Item 102, regarding production, reserves, locations, development and the nature of the company's interests, would no longer need to apply to oil and gas producing activities if the proposals are adopted, so we also propose to limit that instruction to mining activities.[96]

Finally, we propose to eliminate Instruction 4 to Item 102 regarding the ability of the Commission's staff to request supplemental information, including reserves reports. This instruction is duplicative of Securities Act Rule 418 [97] and Exchange Act 12b–4,[98] regarding the staff's general ability to request supplemental information.

Request for Comment

- Is the proposed amendment to Instruction 3, limiting it to extractive activities other than oil and gas activities, appropriate? Should we simply call them mining activities?
- Are there any other aspects of Item 102 that we should revise? If so, what are they and how should they be revised?

B. Proposed New Subpart 1200 to Regulation S-K Codifying Industry Guide 2 Regarding Disclosures by Companies Engaged in Oil and Gas Producing Activities

1. Overview

We are proposing to add a new Subpart 1200 to Regulation S-K that would codify the disclosure requirements related to companies engaged in oil and gas producing activities. This proposed subpart would largely include the existing requirements of Industry Guide 2. However, we have revised these requirements to update them, provide better clarity with respect to the level of detail required in oil and gas disclosures, including the geographic areas by which disclosures need to be made, and provide formats for tabular presentation of these disclosures. In addition, the proposed Subpart 1200 would contain the following new disclosure requirements, many of which have been requested by industry participants:

- Disclosure of reserves from non-traditional sources (*i.e.*, bitumen, shale, coalbed methane) as oil and gas reserves;
- Optional disclosure of probable and possible reserves;
- Optional disclosure of oil and gas reserves' sensitivity to price;
- Disclosure of the development of proved undeveloped reserves, including those that are held for five years or more and an explanation of why they should continue to be considered proved;
- Disclosure of technologies used to establish additions to reserves estimates;
- Disclosure regarding material changes due to technology, prices, and concession conditions;
- Disclosure of the objectivity and qualifications of the business entity or individual preparing or auditing the reserves estimates;
- Filing a report prepared by the third party if a company represents that it is relying on a third party to prepare the reserves estimates or conduct a reserves audit; and
- Disclosure based on a new definition for the term ''by geographic area.''

We discuss each of these proposed new Items below.

2. Proposed Item 1201 (General Instructions to Oil and Gas Industry-Specific Disclosures)

We propose to add new Item 1201 to Regulation S–K. This item would set forth the general instructions to Subpart 1200. The proposed item would contain three paragraphs that would:

- Instruct companies for which oil and gas producing activities are material to provide the disclosures specified in Subpart 1200;[99]
- Clarify that, although a company must present specified Subpart 1200 information in tabular form, the company may modify the format of the table for ease of presentation, to add additional information or to combine two or more required tables; and
- State that the definitions in Rule 4–10(a) of Regulation S–X apply to Subpart 1200.

Request for Comment

- Are the proposed general instructions to Subpart 1200 clear and appropriate? Are there any other general instructions that we should include in this proposed Item?
- For disclosure items requiring tabulated information, should we require companies to adhere to a specified tabular format, instead of permitting companies to reorganize, supplement, or combine the tables?
- In particular, should we permit a company to disclose reserves estimates from conventional accumulations in the same table as it discloses its reserves estimates from continuous accumulations?

3. Proposed Item 1202 (Disclosure of Reserves)

Existing Instruction 3 to Item 102 of Regulation S–K requires disclosure of an extractive enterprise's proved reserves. With respect to oil and gas producing companies, we are proposing to replace this Instruction by adding a new Item 1202 to Regulation S–K that would contain a similar disclosure requirement regarding a company's proved reserves.[100] However, the proposed new Item would expand on the requirements of Item 102 by specifically permitting the disclosure of probable and possible reserves and permitting the disclosure of reserves from continuous accumulations. Proposed Item 1202 would organize reserves disclosure into the following three tables:

- An oil and gas reserves from conventional accumulations table;
- An oil and gas reserves from continuous accumulations table; and
- An optional sensitivity analysis table.

i. Oil and Gas Reserves Tables

Proposed Item 1202 would require disclosure, in the aggregate and by geographic area,[101] of reserves estimated using prices and costs under existing economic conditions, for each product type, in the following categories:

- Proved developed reserves;
- Proved undeveloped reserves;
- Total proved reserves;
- Probable reserves (optional); and
- Possible reserves (optional).

The proposed Item would provide for separate tables for reserves in conventional accumulations [102] and continuous accumulations.[103] However,

[95] See proposed Instruction 5 to Item 102. Extractive enterprises include enterprises such as mining companies that extract resources from the ground.

[96] See proposed Instruction 3 to Item 102.

[97] 17 CFR 230.418.

[98] 17 CFR 240.12b–4.

[99] This paragraph would maintain the existing exclusion in Industry Guide 2 for limited partnerships and joint ventures that conduct, operate, manage, or report upon oil and gas drilling or income programs, that acquire properties either for drilling and production, or for production of oil, gas, or geothermal steam or water.

[100] See proposed Item 1202.

[101] See Section II.B.3.iv for a discussion about geographic area specificity.

[102] See proposed Item 1202(a).

[103] See proposed Item 1202(b).

a company may combine these two tables.[104] If a company does so, it must present different products in different columns. For example, because refining and processing, other than field processing of gas to extract liquid hydrocarbons, are not oil and gas producing activities, we believe that a company that extracts and processes oil sands into synthetic crude oil should report the first salable product, bitumen, as its reserves. The activity of processing bitumen into synthetic crude oil at a plant, even if on or near the extraction location, is a refining process. Forms of these two proposed tables are set forth below:

SUMMARY OF OIL AND GAS RESERVES IN CONVENTIONAL ACCUMULATIONS AS OF FISCAL-YEAR END BASED ON AVERAGE FISCAL-YEAR PRICES

Reserves category	Reserves	
	Oil (mbbls)	Natural gas (mmcf)
PROVED		
Developed:		
Continent A		
Continent B		
15% Country A		
15% Country B		
10% Field A in Country B		
Other Fields in Country B		
Other Countries in Continent B		
Undeveloped:		
Continent A		
Continent B		
15% Country A		
15% Country B		
10% Field A in Country B		
Other Fields in Country B		
Other Countries in Continent B		
TOTAL PROVED.		
PROBABLE.		
POSSIBLE.		

SUMMARY OF OIL AND GAS RESERVES FROM CONTINUOUS ACCUMULATIONS AS OF FISCAL-YEAR END BASED ON AVERAGE FISCAL-YEAR PRICES

Reserves category	Reserves		
	Product A[105] (measure)	Product B (measure)	Product C (measure)
PROVED.			
Developed:			
Country A			
Country B			
10% Field A in Country B			
Other Fields in Country B			
Undeveloped:			
Country A			
Country B			
10% Field A in Country B			
Other Fields in Country B			
TOTAL PROVED.			
PROBABLE.			
POSSIBLE.			

A company may, but would not be required, to disclose probable or possible reserves in these tables. If a company discloses probable or possible reserves, it must provide the same level of geographic detail as with proved reserves. The proposal would require a company to update such reserves tables as of the close of each fiscal year. The table would be categorized by the products (Product A, Product B, etc.) that are the result of oil and gas producing activities. Thus, an oil and gas company should not disclose, as reserves, products that are not the result of oil and gas producing activities, including refined or processed products

[104] See proposed Item 1201(b).

[105] The product should be based on the product that is the result of the oil and gas producing activity, such as bitumen, which is extracted from oil sands.

such as synthetic crude oil.[106] Of course, a company may provide supplemental disclosure regarding the amount of synthetic crude oil or other refined or processed product that may be extracted ultimately from the product of oil and gas producing activities. The proposal would also clarify that, if the company discloses amounts of a product in barrels of oil equivalent, it must disclose the basis for such equivalency.

The reserves to be reported in these proposed tables would be aggregations (to the company total level) of reserves determined for individual wells, reservoirs, properties, fields, or projects. Regardless of whether the reserves were determined using deterministic or probabilistic methods, the reported reserves should be simple arithmetic sums of all estimates at the well, reservoir, property, field, or project level within each reserves category.

The proposed items would require companies that previously have not disclosed reserves estimates in a filing with the Commission to disclose the technologies used to establish the appropriate level of certainty for reserves estimates from material properties included in the total reserves disclosed. However, the particular properties would not need to be identified. Similarly, proposed Item 1209 would note that companies should discuss the technologies used to establish the appropriate level of certainty for material additions to, or increases in, reserves estimates.[107] The proposal would not require a company to disclose the technologies used to determine levels of certainty for reserves disclosed prior to effectiveness of the proposed amendments, if adopted, because the current definitions limit technologies to prescribed types, such as production or flow tests or actual observation of oil-water contacts in the wellbore.

If probable or possible reserves are disclosed, the proposed item would also require the company to disclose the relative risks related to such reserves estimations. Because we are proposing to permit disclosure of probable and possible reserves, an instruction to this proposed Item would revise existing Instruction 5 to Item 102 of Regulation S-K to continue to prohibit disclosure of estimates of oil or gas resources other than reserves, and any estimated values of such resources, in any document publicly filed with the Commission, unless such information is required to be disclosed in the document by foreign or state law.[108] We continue to believe that such resources are too speculative and may lead investors to incorrect conclusions. However, consistent with Instruction 5, a company could disclose such estimates in a Commission filing related to an acquisition, merger, or consolidation if the company previously provided those estimates to a person that is offering to acquire, merge, or consolidate with the company or otherwise to acquire the company's securities.[109]

Request for Comment

- Should we permit companies to disclose their probable reserves or possible reserves? Is the probable reserves category, the possible reserves category (or both categories) too uncertain to be included as disclosure in a company's public filings? Should we only permit disclosure of probable reserves? What are the advantages and disadvantages of permitting disclosure of probable and possible reserves, from the perspective of both an oil and gas company and an investor in an oil and gas company that chooses to provide such disclosure? Would investors be concerned by such disclosure? Would they understand the risks involved with probable or possible reserves?
- Would the proposed disclosure requirements provide sufficient disclosure for investors to understand how companies classified their reserves? Should the proposed Item require more disclosure regarding the technologies used to establish certainty levels and assumptions made to determine the reserves estimates for each classification?
- Should companies be required to provide risk factor disclosure regarding the relative uncertainty associated with the estimation of probable and possible reserves?
- Should we allow filers to report sums of proved and probable reserves or sums of proved, probable, and possible reserves? Or, to avoid misleading investors, should we allow only disclosure of each category of reserves by itself and not in sum with others, as proposed?
- Should we require disclosure of probable or possible reserves estimates in a company's public filings if that company otherwise discloses such estimates outside of its filings?
- Should we require all reported reserves to be simple arithmetic sums of all estimates, as proposed? Alternatively, should we allow probabilistic aggregation of reserves estimated probabilistically up to the company level? If we do so, will company reserves estimated and aggregated deterministically be comparable to company reserves estimated and aggregated probabilistically?
- Should we revise the proposed form and content of the table? If so, how should we revise the table's form or content?
- Should we eliminate the current exception regarding the disclosure of estimates of resources in the context of an acquisition, merger, or consolidation if the company previously provided those estimates to a person that is offering to acquire, merge, or consolidate with the company or otherwise to acquire the company's securities? If so, would this create a significant imbalance in the disclosures being made to the possible acquirer, as opposed to the company's shareholders?

ii. Optional Reserves Sensitivity Analysis Table

Our current rules require determining whether oil or gas is economically producible based on the price on the last day of the fiscal year. As discussed in Section II.B.1 above, this single-day price has been the subject of some criticism from commenters in the past because it is sensitive to short-term price volatility and does not account for seasonal variations in the prices of different products. Although we are proposing to require that reserves estimates be based on a 12-month average of historical prices, we are proposing to permit companies to include an optional reserves sensitivity analysis table in their filings that would show what the reserves estimates would be if based on different price and cost criteria, such as a range of prices and costs that may reasonably be achieved, including standardized futures prices or management's own forecasts. The company would be free to choose the different scenario or scenarios, if any, that it wishes to disclose in the table. If the company chooses to provide such disclosure, it would be required to disclose the price and cost schedules and assumptions on which the alternate reserves estimates are based. Similarly, companies should remember that Item 303 of Regulation S-K (Management's Discussion and Analysis of Financial Condition and Results of Operations) [110]

[106] Rule 4–10(a)(16)(ii) specifically excludes from oil and gas producing activities refining and processing (other than field processing of gas to extract liquid hydrocarbons) of oil and gas.

[107] See proposed Item 1209.

[108] See proposed Instruction 5 to Item 102.

[109] *Id.*

[110] See Item 303 of Regulation S–K [17 CFR 229.303].

requires discussion of known trends and uncertainties, which may include changes to prices and costs. A form of this optional reserves sensitivity analysis table is set forth below.

SENSITIVITY OF RESERVES TO PRICES BY PRINCIPAL PRODUCT TYPE AND PRICE SCENARIO

Price case	Proved reserves			Probable reserves			Possible reserves		
	Oil (mbbls)	Gas (mmcf)	Product A (measure)	Oil (mbbls)	Gas (mmcf)	Product A (measure)	Oil (mbbls)	Gas (mmcf)	Product A (measure)
Scenario 1									
Scenario 2									

Request for Comments

- Should we adopt such an optional reserves sensitivity analysis table? Would such a table be beneficial to investors? Is such a table necessary or appropriate?
- Should we require a sensitivity analysis if there has been a significant decline in prices at the end of the year? If so, should we specify a certain percentage decline that would trigger such disclosure?
- Should we revise the proposed form and content of the table? If so, how should we revise the table's form or content?
- As noted above in this release, SFAS 69 currently uses single-day, year-end prices to estimate reserves, while the reserves estimates in the proposed tables would be based on 12-month average year-end prices. If the FASB elects not to change its SFAS 69 disclosures to be based on 12-month average year-end prices, should we require reconciliation between the proposed Item 1202 disclosures and the SFAS 69 disclosures? What other means should we adopt to promote comparability between these disclosures?

iii. Geographic Specificity With Respect to Reserves Disclosures

There have been differing interpretations among oil and gas companies as to the level of specificity required when a company is breaking out its reserves disclosures based on geographic area as required by Instruction 3 of Item 102 of Regulation S–K.[111] Some companies currently broadly organize their reserves only by hemisphere or continent. SFAS 69 requires reserves disclosure to be separately disclosed for the company's home country and foreign geographic areas. It defines ''foreign geographic areas'' as ''individual countries or groups of countries as appropriate for meaningful disclosure in the circumstances.'' Since SFAS 69 was issued, the operations of oil and gas companies have become much more diversified globally. For many large U.S. oil and gas producers, the majority of reserves are now overseas, with material amounts in individual countries and even individual fields or basins. We think that greater specificity than simply disclosing reserves within ''groups of countries'' would benefit investors and currently are necessary to meet the requirements of Item 102 of Regulation S–K, in cases where a particular country, sedimentary basin, or field constitutes a significant portion of a company's reserves, particularly if that country, sedimentary basin, or field is subject to unique risks, such as political instability. Thus, instructions to proposed Item 1202 would state that, in general, disclosures need only be broken out by continent, except where:

- A particular country contains 15% or more of the company's global oil reserves or gas reserves, or
- A particular sedimentary basin or field contains 10% or more of the company's global oil reserves or gas reserves.[112]

This proposed amendment would differ from the existing guidance in SFAS 69, which would permit disclosure based on broader geographic areas. In addition, under the proposals, a company would be permitted, but not required, to provide more detailed disclosure, such as countries or fields containing less than the specified percentages.

Request for Comment

- Should we provide the proposed guidance about the level of specificity required when a company discloses its oil and gas reserves by ''geographic area''?
- Are the proposed 15% and 10% thresholds appropriate? Should either, or both, of these percentages be different? For example, should both be 15%? Should both be 10%? Would 5% or 20% be a more appropriate threshold for either or both?
- What would be the impact to investors if companies are permitted to omit disclosures based on the individual field or basin due to concerns related to competitive sensitivities? Would investors be harmed if disclosure based on the individual field or basin is omitted due to concerns related to competitive sensitivities? Is there a better way to provide disclosure that a company heavily dependent on a particular field or basin may be subject to risks related to the concentration of its reserves?
- Would greater specificity cause competitive harm? Is so, how can the rules mitigate the risk of harm?
- In the event that the FASB does not amend SFAS 69, should we require companies to supplement their SFAS 69 disclosure with greater geographic specificity? If the FASB does not amend SFAS 69, should we require that companies reconcile the differences between the reserves estimates shown in the SFAS 69 disclosure with the estimates presented in the proposed tables?

iv. Separate Disclosure of Conventional and Continuous Accumulations

Under proposed Item 1202, companies would be required to disclose reserves from conventional accumulations separately from reserves in continuous accumulations. Several commenters on the Concept Release believed that it is important to disclose such reserves separately.[113] Although proposed Item 1201 would permit a company to combine these two tables, it would not permit a company to combine columns of different tables. Thus, for example, if a company decided to combine the two tables, it would have to represent reserves in conventional natural gas reservoirs separately from gas reserves in coalbeds or gas shales.

[111] 17 CFR 229.102.

[112] See proposed Instruction to Item 1202.

[113] See letters from Brookwood, D. McBride, Moody's, and Oil Change.

Request for Comment

- Should we require separate disclosure of conventional accumulations and continuous accumulations, as proposed?
- Should we permit combining of columns if the product of the oil and gas producing activity is the same, such as natural gas, regardless of whether the reserves are in conventional or continuous accumulations?

v. Preparation of Reserves Estimates or Reserves Audits

In the Concept Release, we sought comment on whether the rules should require a company to retain an independent third party to prepare, or conduct a reserves audit on, the company's reserves estimates. Most commenters urged the Commission not to adopt such a requirement.[114] Some believed that a company's internal staff, particularly at larger companies, is in a better position to prepare those estimates.[115] In addition, commenters pointed out a potential lack of qualified third party engineers and other professionals to conduct the increase in work that would need to be accomplished if we adopted such a requirement.[116] Others were concerned about the added costs that would be associated with such a requirement.[117] However, some commenters believed that the participation of an independent third party would provide heightened assurance regarding the accuracy of the reserves estimates.[118]

In light of the commenters' concerns, we are not proposing to require an independent third party to prepare the reserves estimates or conduct a reserves audit. However, several commenters noted that it is important that persons preparing or auditing the reserves estimates be objective and qualified to perform the work that they are doing.[119] In addition, because we are proposing to broaden permissible technologies for establishing levels of certainty of reserves, we believe that the proper application of such technologies in particular situations requires a heightened level of judgment. Therefore, we propose to require disclosure regarding the qualifications of the person primarily responsible for preparing the reserves estimates or, if the company represents that a reserves audit was conducted, conducting a reserves audit.[120] In addition, we propose to require disclosure regarding the objectivity of third parties that conduct such service for an oil and gas company and measures taken to assure the independence and objectivity of employees. We based these qualifications largely on the reserves audit guidance of the Society of Petroleum Engineers (SPE).[121] In particular, we propose to require the company to disclose the following information about the technical person[122] primarily responsible for preparing the reserves estimate or, if the company represents that such a reserves audit was conducted, conducting the reserves audit:

(1) If the person is an employee of the company,

- The fact that an employee of the company had primary responsibility for preparing the reserves estimate (but the employee would not have to be identified); and
- Measures taken to assure the independence and objectivity of the estimate;

(2) If the person is not an employee of the company,

- The identity of the person;
- The nature and amount of all work that the person has performed for the company during the past three fiscal years, other than preparing the reserves estimate or conducting the reserves audit, as well as all compensation and fees (in any form) paid to that person for all such services; and
- Whether the person has any other interests in the company or other conflict of interests;

(3) Whether the person (regardless of whether an employee or third party) primarily responsible for the estimating or auditing of reserves:

- Has a minimum of three years of practical experience in petroleum engineering or petroleum production geology, with at least one full year of this experience being in the estimation and evaluation of reserves if the person was in charge of preparing the reserves estimates;
- Has a minimum of ten years of practical experience in petroleum engineering or petroleum production geology, with at least five years of this experience being in the estimation and evaluation of reserves and the conducting of reserves audits if that person conducted a reserves audit of the registrant's reserves estimates;
- Has received, and is maintaining in good standing, a registered or certified professional engineer's license or a registered or certified professional geologist's license, or the equivalent thereof, from an appropriate governmental authority or a recognized self-regulating professional organization; and
- Has a bachelor's or advanced degree in petroleum engineering, geology, or other discipline of engineering or physical science, and if so, the specific degree earned by the person; and

(4) Any memberships, in good standing, of the person (regardless of whether an employee or third party) with a self-regulatory organization of engineers, geologists, other geoscientists, or other professionals whose professional practice includes reserves evaluations or reserves audits, that:

- Admits members primarily on the basis of their educational qualifications;
- Requires its members to comply with the professional standards of competence and ethics prescribed by the organization that are relevant to the estimation, evaluation, review, or audit of reserves data; and
- Has disciplinary powers, including the power to suspend or expel a member.

For purposes of the proposed disclosure, the ''person'' could be either an individual or an entity. If the person is an entity, then the disclosures regarding technical qualifications in the paragraphs (3) and (4) would apply to the individual within the entity who is responsible for the technical aspects of the reserves estimation or audit. To the extent that the person does not have all of the technical qualifications above, the company would be required to discuss the reasons why it believes that the person is otherwise qualified to prepare the estimates or conduct the reserves audit, as applicable, and any risks associated with reserves estimates not

[114] See letters from API, BHP, BP, CFA, CNOOC, Denbury, Devon, Eni, Energy Literacy, ExxonMobil, Imperial, R. Jones, D. McBride, Newfield, Nexen, Petro-Canada, Ross, D. Ryder, Sasol, Shell, Talisman, Total, and W. van de Vijver.

[115] See letters from API, Denbury, ExxonMobil, Imperial, Nexen, Shell, and Talisman.

[116] See letters from AAPG, API, BP, Devon, ExxonMobil, Imperial, D. McBride, Newfield, D. Ryder, and Sasol.

[117] See letters from Sasol and Nexen.

[118] See letters from CIBC, EnCana, Fitch, D. Kelly, Petrobras, Robinson, Ultra, and White & Case.

[119] See letters from Brookwood, Denbury, D. McBride, Petro-Canada, Robinson, and Total.

[120] See proposed Item 1202(a)(6).

[121] See Standards Pertaining to the Estimating and Auditing of Oil and Gas Reserves Information of the SPE (SPE Reserves Auditing Standards).

[122] With regard to the objectivity of a technical person, the ''person'' could be an individual or an entity, as appropriate. However, with regard to the qualifications of a person, the disclosure would relate to the individual who is primarily responsible for the technical aspects of the reserves estimation or audit. Thus, this individual is not necessarily the individual generally overseeing the estimation or audit, but the individual who is primarily responsible for the actual calculations and estimation or audit.

prepared or audited by persons with such qualifications.[123]

Request for Comments

- Should we require companies to disclose whether the person primarily responsible for preparing reserves estimates or conducting reserves audits meets the specified qualification standards, as proposed? Should we, instead, simply require companies to disclose such a person's qualifications?
- Should we require disclosure regarding a person's objectivity when a company prepares its reserves estimates in-house? Should the proposed disclosures regarding objectivity be required only if a company hires a third party to prepare its reserve estimates or conduct a reserves audit, as proposed?
- If a company prepares its reserves estimates in-house, should we require disclosure of any procedures that the company has taken to preserve that person's objectivity? Should we require disclosure of whether the internal person meets specified objectivity criteria? For example, should we apply the some of the same criteria that we propose to apply to third party preparers? If so, which ones?
- Consistent with the SPE's auditing guidance regarding internal auditors, should we require companies to disclose whether that person (1) is assigned to an internal-audit group which is (a) accountable to senior level management or the board of directors of the company and (b) separate and independent from the operating and investment decision making process of the company and (2) is granted complete and unrestricted freedom to report, to one or more principal executives or the board of directors, any substantive or procedural irregularities of which that person becomes aware?
- Should we require disclosure with other specific independence or objectivity standards and, if so, what?
- Should we revise any of the proposed provisions regarding a person's objectivity or technical qualifications? Should the proposal require disclosure of other criteria that would have bearing on determining whether the person is objective or qualified?
- Should a company be required to present risk factor disclosure if its reserves estimates were not prepared by a person meeting the objectivity and technical qualifications?
- Because of the inherent uncertainty regarding estimates of probable and possible reserves, should we require the proposed disclosure only if a company chooses to disclose probable or possible reserves?
- Should we require that a third party prepare reserves estimates or conduct a reserves audit if a company chooses to disclose probable or possible reserves estimates?
- Should we require the proposed disclosure only if the company is using technologies other than those which are allowed in our current definitions to establish levels of certainty?

vi. Contents of Third Party Preparer and Reserves Audit Reports

Currently, if the company represents that it relied on a third party for a portion of its filing, it must obtain consent from that third party.[124] In order to clarify which portion of the disclosures the third party is expertising, we propose that, if a company represents that its estimates of reserves are based on estimates prepared by a third party, the company must file a report of the third party as an exhibit to the relevant registration statement or report.[125] The proposal would require that report to include the following disclosure:

- The purpose for which the report is being prepared and for whom it is prepared;
- The effective date of the report and the date on which the report was completed;
- The proportion of the company's total reserves covered by the report and the geographic area in which the covered reserves are located;
- The assumptions, data, methods, and procedures used to conduct the reserves audit, including the percentage of company's total reserves reviewed in connection with the preparation of the report, and a statement that such assumptions, data, methods, and procedures are appropriate for the purpose served by the report;
- A discussion of primary economic assumptions;
- A discussion of the possible effects of regulation on the ability of the registrant to recover the estimated reserves;
- A discussion regarding the inherent risks and uncertainties of reserves estimates;
- A statement that the third party has used all methods and procedures as it considered necessary under the circumstances to prepare the report; and
- The signature of the third party.

Similarly, if the company represents that a third party conducted a reserves audit of the reserves estimates, the company would be required to file a report of the third party as an exhibit to the relevant registration statement or report. We are not proposing that these reports be the full ''reserves report'' that is often very detailed and voluminous. Rather these proposed reports would summarize the scope of work performed by, and conclusions of, the third party. The proposed contents of these reports mirror the guidance issued by the Society of Petroleum Evaluation Engineers regarding the preparation of such reports.

We propose to define the term ''reserves audit'' as the process of reviewing certain of the pertinent facts interpreted and assumptions made that have resulted in an estimate of reserves prepared by others and the rendering of an opinion about the appropriateness of the methodologies employed, the adequacy and quality of the data relied upon, the thoroughness of the reserves estimation process, the classification of reserves appropriate to the relevant definitions used, and the reasonableness of the estimated reserves quantities.[126] The proposed definition would state that, in order to disclose that a ''reserves audit'' has been conducted, the report resulting from this review must represent an examination of at least 80% of the portion of the company's reserves covered by the reserves audit. This definition is largely derived from the SPE's reserves auditing guidelines.[127]

We propose to require that the report associated with such a reserves audit must include the following disclosure, based on the Society of Petroleum Evaluation Engineers's audit report guidelines:

- The purpose for which the report is being prepared and for whom it is prepared;
- The effective date of the report and the date on which the report was completed;
- The proportion of the company's total reserves covered by the report and the geographic area in which the covered reserves are located;
- The assumptions, data, methods, and procedures used to conduct the reserves audit, including the percentage of company's total reserves reviewed in connection with the preparation of the report, and a statement that such assumptions, data, methods, and procedures are appropriate for the purpose served by the report;

[123] See proposed Item 1202(a)(6)(v).

[124] See 17 CFR 229.601(b)(23).

[125] See proposed Item 1202(a)(7).

[126] See proposed Item 1202(a)(9).

[127] Consistent with the SPE's auditing guidelines, we note that a ''reserves audit'' is significantly different from a financial audit. See SPE Reserves Auditing Standards.

- A discussion of primary economic assumptions;
- A discussion of the possible effects of regulation on the ability of the registrant to recover the estimated reserves;
- A discussion regarding the inherent risks and uncertainties of reserves estimates;
- A statement that the third party has used all methods and procedures as it considered necessary under the circumstances to prepare the report;
- A brief summary of the third party's conclusions with respect to the reserves estimates; and
- The signature of the third party.

Request for Comment

- Should we require a company to file reports from third party reserves preparers and reserves auditors containing the proposed disclosure when the company represents that a third party prepared its reserves estimates or conducted a reserves audit? As an alternative, should we not require that the third party's report be filed, but that the company must provide a description of the third party's report? If so, should we specify that the company's description of the third party's report should contain the information that we propose to require in the third party's report?
- Should we specify the disclosures that need to be included in third party reports? If so, is the disclosure that we have proposed for the reserves estimate preparer's and reserves auditor's reports appropriate? Should these reports contain more or less information? If they should include more information, what other information should they include? If less, what proposed information is not necessary?
- In an audit, should we specify the minimum percentage of reserves that should be examined and determined to be reasonable? If so, what should that percentage be? Should it be 50%, 75%, 90% or some other percentage? If so, why?
- If the company engages multiple third parties to conduct reserves audits on different portions of its reserves, should the definition of reserves audit be conditioned on each third party evaluating at least 80% of the reserves covered by its reserves audit, as proposed? Is the scope of a reserves audit defined by geographic areas? If so, should the definition of a reserves audit be based on the third party's evaluation of 80% of the reserves located in the geographic areas covered by the reserves audit?
- Would disclosure that a company has hired a third party to audit only a portion of its reserves be confusing to investors? Is there a danger that investors will not be able to ascertain the extent of the reserves audit? Should we require that a company could not disclose that it has conducted a reserves audit unless 80% of all of its reserves have been evaluated by a third party or, if the company hires multiple third parties, by all of the third parties collectively?
- Is the proposed definition of ''reserves audit'' appropriate? Should we revise this proposed definition in any way?

vii. Solicitation of Comments on Process Reviews

The Society of Petroleum Engineer's reserves auditing standards reference a third type of review, which it calls a ''process review.'' [128] It defines a process review as an investigation by a person who is qualified by experience and training equivalent to that of a reserves auditor to address the adequacy and effectiveness of an entity's internal processes and controls relative to reserves estimation. However, it notes that a process review should not include an opinion relative to the reasonableness of the reserves quantities and should be limited to the processes and control system reviewed. The SPE's standards state that, although such reviews may provide value to the entity, an external or internal process review is not of sufficient rigor to establish appropriate classifications and quantities of reserves and should not be represented to the public as being equivalent to an audit of reserves. We are not proposing requiring disclosure of whether a company has conducted a process review, as defined by the SPE. In so doing, we note the SPE's admonition that such reviews are not as rigorous as a reserves audit. We are not proposing to prohibit disclosure of such process reviews because we believe that they may be beneficial to companies and shareholders. However, in order to help prevent confusion between the different levels of third-party participation, companies should clearly disclose the level and scope of work that was performed. In addition, a company should avoid using language which may lead investors to erroneously believe that a higher level of third-party review was performed.

Request for Comment

- Should we require disclosure of whether a company has conducted a process review? Notwithstanding the relative lack of rigor of a process review compared to a reserves audit, would investors find such information useful?
- The proposal does not prohibit disclosure of process reviews. Is there a danger that the public may be confused by such disclosure? Should we prohibit disclosure of any type of reserves-related activity other than the preparation of the reserves estimates or a reserves audit?

4. Proposed Item 1203 (Proved Undeveloped Reserves)

We are proposing to require disclosure of the aging of proved undeveloped reserves (PUDs). Some of the commenters responding to the Concept Release expressed concerns regarding companies that carry alleged PUDs for lengthy time periods.[129] Long holding periods of such reserves raise the question whether the company has a bona fide intention or the capability to develop those reserves, even though the company has determined them to be economically producible. Several commenters recommended that we require a company to remove PUDs that have remained so classified for five years or longer.[130] PRMS guidelines indicate that five years is a benchmark for a reasonable timeframe to initiate the development of reserves, although they recognize that this timeframe depends on the specific circumstances. However, others suggested that a company should be able to characterize PUDs as such for longer than a five-year period if there are exceptional circumstances (such as extensive offshore projects) that justify continued inclusion of such reserves in the proved category.[131]

We propose to address these concerns through disclosure. We believe that the need for such disclosure is heightened as a result of our proposed amendments that would ease the requirements for recognizing PUDs and thereby increase the amount of PUDs disclosed in filings, even though the properties representing such proved reserves have not yet been developed and therefore do not provide the company with cash flow. Proposed Item 1203 would require an oil and gas company to prepare a table showing, for each of the last five fiscal years and by product type, proved reserves estimated using current prices and costs in the following categories:

- Proved undeveloped reserves converted to proved developed reserves during the year; and

[128] See SPE Reserves Auditing Standards.

[129] See letters from CIBC, Devon, EIA, D. McBride, Robinson, D. Ryder, and SPE.

[130] See letters from Devon, EIA, D. McBride, D. Olds, SPE, and Ultra. This is consistent with PRMS guidance. See Section 2.1.3.2 of PRMS.

[131] See letters from Denbury, Devon, EIA, D. McBride, D. Olds, Robinson, SPE, and StatoilHydro.

• Net investment required to convert proved undeveloped reserves to proved developed reserves during the year.[132]

A form of the proposed PUDs development table is set forth below:

CONVERSION OF PROVED UNDEVELOPED RESERVES

Fiscal year	Proved undeveloped reserves converted to proved developed reserves			Investment in conversion of proved undeveloped reserves to proved developed reserves ($)
	Oil (mbbls)	Gas (mmcf)	Product A (measure)	
2004				
2005				
2006				
2007				
2008				

This table would allow investors to assess how a company is managing its PUDs. In addition, proposed Item 1203 would require disclosure, by product type, of any PUDs which have remained undeveloped for five years or more and the reasons for the lack of development. The proposed item would also require a company to disclose its plans to develop PUDs and to further develop proved oil and gas reserves. Finally, the company would be required to discuss any material changes to PUDs.

Request for Comment

• Should we adopt the proposed table? Alternatively, should we simply require companies to reclassify their PUDs after five years?

• Should the table require disclosure of other categories of changes to the status of PUDs, such as acquisitions, removals, and production? Should we add any categories?

• Some of the abuse related to PUD disclosure may be related to companies' desire to show proved reserves in light of our prohibition on disclosure of probable reserves. Would the proposed rules permitting disclosure of probable reserves reduce the incentive to categorize reserves as PUDs? If so, is the proposed table necessary?

• Should we require disclosure of the reasons for maintaining PUDs that have been classified as PUDs for more than five years, as proposed? If not, why not?

• Should we require a company to disclose its plans to develop PUDs and to further develop proved oil and gas reserves, as proposed? If not, why not?

• Should we require the company to discuss any material changes to PUDs that are disclosed in the table? If not, why not?

5. Proposed Item 1204 (Oil and gas production)

Item 3 of Industry Guide 2 currently requires disclosure, by geographic area, of oil and gas production. We propose codifying that requirement in proposed Item 1204 of Regulation S–K.[133] In addition, the proposed Item would require such disclosure to be made in tabular form for ease of presentation. As a practical matter, it appears that most companies already provide this disclosure in tabular form. A form of the proposed table is set forth below:

OIL AND GAS PRODUCTION, SALES PRICES, AND PRODUCTION COSTS

Location	Oil			Gas			Product A		
	Production (mbbls)	Sales price ($US/bbl)	Production cost ($US/boe)	Production (mmcf)	Sales price ($US/mcf)	Production cost ($US/mcfe)	Production (measure)	Sales price ($US/measure)	Production cost ($US/measure)
Geographic Area A									
2005									
2006									
2007									
Geographic Area B									
Geographic Area C									

The disclosure that proposed Item 1204 would require is very similar to the disclosure called for by existing Industry Guide 2, but would be modified in two respects. First, proposed Item 1204 would use the definition of the term ''geographic area'' in proposed Item 1201(d), rather than use the current reference to SFAS 69, which only requires disclosure by country or, if appropriate, groups of countries.[134]

In addition, we propose to eliminate existing instructions to Item 3 of Industry Guide 2 that we believe are no longer necessary. These instructions relate to the following topics:

• Separate reporting of production through processing plant ownership;

• Inclusion of only marketable production of gas on an ''as sold'' basis, including the exclusion of flared gas, injected gas, and gas consumed in operations;

• Determination of transfer price of oil and gas; and

• Means to calculate average production costs.

We believe that these instructions are no longer necessary in light of changes in the oil and gas industry and markets and relate to issues that are commonly understood and do not require additional instruction. Several of these instructions have very limited application.

[132] See proposed Item 1204.

[133] See proposed Item 1204.

[134] See SFAS 69.

Request for Comments

- Should we adopt the proposed table?
- Should the disclosure be made based on the proposed definition of ''geographic area,'' or should we continue to follow the definition set forth in SFAS 69?
- Should we eliminate the instructions listed above, as proposed? If not, which instructions should we retain? Please explain why those instructions continue to be useful.

6. Proposed Item 1205 (Drilling and other exploratory and development activities)

Item 6 of Industry Guide 2 currently calls for disclosure of drilling activities by geographic area. We propose to codify this disclosure as Item 1205 of Regulation S–K, in tabular form.[135] A form of the proposed table is set forth below:

DRILLING ACTIVITIES

[Geographic area]

	Exploratory wells		Development wells		Extension wells	
	Gross	Net	Gross	Net	Gross	Net
Oil						
Fiscal Year						
Fiscal Year–1						
Fiscal Year–2						
Natural Gas						
Fiscal Year						
Fiscal Year–1						
Fiscal Year–2						
Product A						
Fiscal Year						
Fiscal Year–1						
Fiscal Year–2						
Suspended						
Fiscal Year						
Fiscal Year–1						
Fiscal Year–2						
Dry						
Fiscal Year						
Fiscal Year–1						
Fiscal Year–2						
Total						

We are also proposing several revisions to the existing disclosures. First, the existing item calls for disclosure by geographic area. We propose to clarify that, for purposes of this item, disclosure should be made pursuant to the definition of ''geographic area'' set forth in proposed Item 1201(d). Second, we propose to add two categories of wells:

- Extension wells and
- Suspended wells.

Currently, Industry Guide 2 only calls for disclosure of the drilling of exploratory and development wells. However, we believe that distinguishing between extension well drilling and exploratory drilling is important because exploratory drilling typically is associated with the discovery of new fields, and thus new sources of oil and gas, rather than merely the extension of an existing field. Thus, we believe that disclosure of extension wells should be distinct from disclosure about exploratory wells.

Similarly, companies sometimes suspend drilling of a well before completion. Because the definition of a dry well requires that the company report the well as abandoned, these suspended drilling projects are not reflected as drilling activities under the current disclosure requirements. Although suspension of drilling does not necessarily mean that the company has abandoned the well, such activities can consume significant capital resources. Thus, we propose to include this category of drilling activity in the disclosure item.

Proposed new Item 1205 would also require disclosure of any other exploratory or development activities that the company has conducted over the prior three years, including implementation of mining methods for the extraction of oil or gas. We recognize that resources in continuous accumulations often require extraction methods that differ significantly from the extraction methods used in connection with traditional oil or gas wells. This proposed new disclosure would provide investors with information about an oil and gas company's full spectrum of exploratory and development activities.

Request for Comment

- Should we adopt the proposed table? Should the disclosures be made based on the definition of ''geographic area'' in proposed Item 1201(d)?
- Should we require separate disclosure about the two new proposed categories of wells-extension wells and suspended wells? Does distinguishing these types of wells from exploratory wells and dry wells provide enough clarity regarding the types of exploratory or development activities?

7. Proposed Item 1206 (Present activities)

Proposed Item 1206 would codify existing Item 7 of Industry Guide 2, which calls for disclosure of present activities, including the number of wells in the process of being drilled

[135] See proposed Item 1205.

(including wells temporarily suspended), waterfloods in process of being installed, pressure maintenance operations, and any other related activities of material importance.[136] We are proposing no substantive changes to the existing disclosure item except clarification that the meaning of the term ''geographical area'' would be based on the proposed definition of that term in proposed Item 1201(d).[137]

Request for Comment

- Should the disclosure of present activities be made based on the definition of ''geographic area'' in proposed Item 1201(d)?
- Should we adopt any other changes to the disclosures currently set forth in existing Item 7 of Industry Guide 2 that we propose to codify in Item 1206?

8. Proposed Item 1207 (Delivery Commitments)

Proposed Item 1207 would codify existing Item 8 of Industry Guide 2, which calls for disclosure of arrangements under which the company is required to deliver specified amounts of oil or gas and how the company intends to meet such commitments.[138] We are not proposing any substantive changes to the disclosure currently called for by Item 8. However, we are proposing a significant amount of restructuring and rewording of the disclosure item to make it easier to understand. These proposed changes largely involve separating embedded lists into separate subparagraphs and general plain English revisions but are not intended to change the substance of the disclosures.

Request for Comment

- Are the proposed revisions appropriate? Do the proposed revisions make any unintended substantive changes to the existing disclosures?
- Should we adopt any substantive changes to the disclosures currently set forth in Item 8 of Industry Guide 2 that we propose to codify in Item 1207?
- Is this disclosure requirement still necessary? Do oil and gas companies still enter into such delivery commitments? Are they material?

9. Proposed Item 1208 (Oil and gas properties, wells, operations, and acreage)

Proposed Item 1208 would codify existing Items 4 and 5 of Industry Guide 2. The proposed item also would require new disclosures not currently called for by Industry Guide 2 that are described below.

i. Enhanced Description of Properties Disclosure Requirement

Item 102 of Regulation S–K provides a very broad, general description of the properties and facilities that a company must disclose in its filings. We propose to add a paragraph to Item 1208 that better illustrates the types of properties and the types of disclosures for those properties that apply to oil and gas companies.[139] The proposed paragraph would require a company to do the following:

- Identify and describe generally its material properties, plants, facilities, and installations;
- Identify the geographic area in which they are located;
- Indicate whether they are located onshore or offshore; and
- Describe any statutory or other mandatory relinquishments, surrenders, back-ins, or changes in ownership.

Request for Comment

- Are the proposed disclosure enhancements regarding oil and gas properties appropriate? Would this enhanced disclosure be helpful to investors?
- Should the disclosures be made based on the definition of ''geographic area'' in proposed Item 1201(d)?
- Do we need to define any of the terms in the proposed language?

ii. Wells and Acreage

Proposed Item 1208 would require separate tabular disclosure of the number of the registrant's producing wells, expressed in terms of both gross wells and net wells, by geographic area.[140] These disclosures are currently called for by Items 4 and 5 of Industry Guide 2. This proposed table would illustrate oil wells and gas wells in both conventional and continuous accumulations and other wells for products from continuous accumulations. A form of the proposed table is set forth below:

WELLS

Location	Producing wells	
	Gross	Net
Geographic Area A:		
Oil Wells		
Natural Gas Wells ..		
Product A Wells		
Total		
Geographic Area B:		
Oil Wells		
Natural Gas Wells ..		
Product A Wells		
Total		

Similarly, it would require tabular disclosure, by geographic area, of the company's total gross and net developed acres (that is, acres spaced or assignable to productive wells) and undeveloped acres, including leases and concessions.[141] A form of the proposed table is set forth below:

ACREAGE

	Developed acres		Undeveloped acres	
	Gross	Net	Gross	Net
Geographic Area A				
Geographic Area B				
Geographic Area C				
Total				

[136] See proposed Item 1206.
[137] See proposed Item 1206(a).
[138] See proposed Item 1207.
[139] See proposed Item 1208(a).
[140] See proposed Item 1208(b) and (c).
[141] See proposed Item 1208(e) and (f).

Request for Comment

• Is the proposed table appropriate? Is there a better way to disclose such information?

• Should the disclosures be made based on the definition of ''geographic area'' in proposed Item 1201(d)?

• Is it necessary to disclose wells and acreage in conventional accumulations separate from wells and acreage in continuous accumulations, as proposed?

• Is this disclosure requirement still necessary? Is disclosure of the number of wells and acreage material? Should we require the disclosures related to wells and acreage only if there is a high concentration of production or reserves attributable to a few wells or limited acreage? If so, should we specify what that concentration would be?

iii. New Proposed Disclosures Regarding Extraction Techniques and Acreage

As noted previously, some oil and gas resources require extraction techniques other than traditional oil and gas wells. Because we are adding non-traditional resources, such as bitumen, to the definition of oil and gas producing activities, we believe that it is appropriate for companies to describe the techniques that the company is using to extract the resources if it is not using a well. Thus, we are proposing to add a new requirement for companies extracting hydrocarbons through means other than wells to provide a discussion of such operations.[142] This disclosure requirement has been drafted broadly to allow for unanticipated developments in extraction technologies.

Proposed Item 1208 also would require a company to disclose, for unproved properties:

• The existence, nature (including any bonding requirements), timing, and cost (specified or estimated) of any work commitments; and

• By geographic area, the net area of unproved property for which the registrant expects its rights to explore, develop, and exploit to expire within one year.[143]

Finally, the proposed Item would continue to require disclosure of areas of acreage concentration, and, if material, the minimum remaining terms of leases and concessions.[144]

Request for Comment

• Should we require more specific disclosure regarding extraction activities that do not involve wells? Should this proposed item remain open-ended to permit description of unanticipated technologies?

• Is the proposed disclosure for unproved properties appropriate? Should the proposed disclosure for unproved properties be set forth in proposed Item 1208? Should we move such disclosure to the reserves table in proposed Item 1202, where reserves are discussed?

10. Proposed Item 1209 (Discussion and Analysis for Registrants Engaged in Oil and Gas Activities)

We propose to add new Item 1209, which would provide topics that a company should address either as part of Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)[145] or in a separate section. First, the proposed Item would require companies to discuss material changes in proved reserves and, if disclosed, probable and possible reserves, and the sources to which such changes are attributable, including changes made due to:

• Changes in prices;

• Technical revisions; and

• Changes in the status of any concessions held (such as terminations, renewals, or changes in provisions).

We note that SFAS 69 currently requires reconciliation of changes to reserves estimates. This proposal is intended to supplement the SFAS 69 disclosure because SFAS 69 currently does not provide for these categories of changes. We believe such disclosure would be helpful because developments in the oil and gas industry and markets, including more liquid commodities markets and expansion of interests in foreign countries involving concessions, have made distinguishing changes resulting from these factors more important.

The proposed Item also would require companies to discuss technologies used to establish the appropriate level of certainty for any material additions to, or increases in, reserves estimates. Finally, the proposed Item would list matters that a company should consider in discussing known trends, demands, commitments, uncertainties, and events that are reasonably likely to have a material effect on the company. These matters include, but are not limited to, the following:

• Prices and costs;

• Performance of currently producing wells, including water production from such wells and the need to use enhanced recovery techniques to maintain production from such wells;

• Performance of any mining-type activities for the production of hydrocarbons;

• The registrant's recent ability to convert proved undeveloped reserves to proved developed reserves, and, if disclosed, probable reserves to proved reserves and possible reserves to probable or proved reserves;

• Anticipated capital expenditures directed toward conversion of proved undeveloped reserves to proved developed reserves, and, if disclosed, probable reserves to proved reserves and possible reserves to probable or proved reserves;

• Anticipated exploratory activities, well drilling, and production;

• The minimum remaining terms of leases and concessions;

• Material changes to any line item in the tables described in Items 1202 through 1208 of Regulation S–K; and

• Potential effects of different forms of rights to resources, such as production sharing contracts, on operations.

The MD&A is typically presented in a self-contained section of the registration statement or report. However, the disclosure requirements that would comprise proposed new Subpart 1200 of Regulation S–K would cause a substantial amount of an oil and gas company's disclosure to appear in tabular format, providing an outline of much of a company's operations. Because the tables will present many of the types of changes that management often discusses in its MD&A, we believe it may be more helpful to investors to locate such discussion close to the tables themselves. Thus, to the extent that any discussion or analysis of known trends, demands, commitments, uncertainties, and events that are reasonably likely to have a material effect on the company is directly relevant to a particular disclosure required by Subpart 1200, the company would be able to include that discussion or analysis with the relevant table, with appropriate cross-references, rather than including it in its general MD&A section.[146]

Request for Comment

• Proposed Item 1209 is not intended to increase a company's disclosure requirements, but specify disclosures already required generally by MD&A. Is such an item helpful?

• Are the proposed topics that an oil and gas company should consider discussing as part of MD&A, whether in the main MD&A section or in conjunction with the relevant table,

[142] See proposed Item 1208(d).

[143] See proposed Item 1208(g).

[144] See proposed Item 1208(h).

[145] See 17 CFR 229.303.

[146] See proposed Item 1209(b).

appropriate? Are there other topics that an oil and gas company should consider discussing?

• Should we permit such discussions in conjunction with the relevant table as proposed? Would this aid comparability of the disclosures? Or should we keep MD&A as a self-contained section?

IV. Proposed Conforming Changes to Form 20–F

Form 20–F is the form on which foreign private issuers file their annual reports and Exchange Act registration statements. Currently, Form 20–F contains instructions that are similar to those in Item 102 of Regulation S–K. However, rather than referring to Industry Guide 2 for disclosures regarding oil and gas producing activities, Form 20–F contains its own ''Appendix A to Item 4.D—Oil and Gas'' (Appendix A) that provides guidance for oil and gas disclosures for foreign private issuers.[147] Appendix A is significantly shorter, and provides far less guidance regarding disclosures, than proposed Subpart 1200 or Industry Guide 2.

We believe that the proposed Subpart 1200 would be appropriate disclosure for all public companies engaged in oil and gas producing activities, including foreign private issuers. The added guidance in Subpart 1200 should promote more consistent and comparable disclosures among oil and gas companies. It is our understanding that many of the larger foreign private issuers already provide disclosure in their filings with the Commission comparable to the disclosure provided by domestic companies. Thus, we are proposing to revise Form 20–F to incorporate Subpart 1200 with respect to oil and gas disclosures and delete Appendix A to Item 4.D in that form.[148] We propose to revise the Instructions to Item 4 of Form 20–F to refer to Subpart 1200 instead of Appendix A.[149]

Thus, the proposal would continue to require the same type of disclosure currently required by Appendix A regarding reserves and production. In addition, the proposal would require foreign private issuers to comply with the following disclosures currently in Industry Guide 2 that we propose to codify in Subpart 1200 of Regulation S–K:

• Drilling and other exploratory and development activities (Item 1205);

• Present activities (Item 1206);

• Delivery commitments (Item 1207); and

• Oil and gas properties, wells, operations, and acreage (Item 1208).

Finally, applying the proposed Subpart 1200 on foreign private issuers would impose the completely new disclosures that we are proposing for domestic companies in this release, including the following:

• Reserves from non-traditional sources (*i.e.,* bitumen, shale, coalbed methane);

• Optional disclosure of probable and possible reserves;

• Optional disclosure of oil and gas reserves' sensitivity to price;

• Proved undeveloped reserves held for five years or more and an explanation of why they should continue to be considered proved;

• Technologies used to establish additions to reserves estimates;

• Material changes due to technology, prices, and concession conditions;

• The objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit;

• The qualifications and measures taken to ensure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates; and

• Filing of the report of a third party if a company represents that it is relying on a third party to prepare the reserves estimates or conduct a reserves audit.

Appendix A currently allows a foreign private issuer to exclude required disclosures about reserves and agreements if its home country prohibits the disclosures. Because these considerations still apply to such foreign private issuers, we propose to move that provision from Appendix A, which we propose to delete, to the Instructions to Item 4 of Form 20–F.[150]

Also, similar to our revisions to Item 102 of Regulation S–K, we propose to limit the Instruction to Item 4.D of Form 20–F to extractive enterprises conducting activities other than oil and gas producing activities because Subpart 1200 would cover companies conducting oil and gas producing activities.[151]

Request for Comment

• Should we delete Appendix A and refer to Subpart 1200 with respect to Form 20–F, as proposed? Why? Should we expand the requirements of Form 20–F to require more disclosure than currently required by Appendix A, as proposed? Conversely, should we only update Appendix A to reflect the proposed new definitions and formats for disclosing reserves and production?

• Would the proposed reference to Subpart 1200 in Form 20–F significantly change the information currently disclosed by foreign private issuers? If so how? Would such a change be appropriate?

• Is the proposed exception for foreign laws that prohibit disclosure about reserves and agreements appropriate? Do such laws affect domestic companies as well? Should Subpart 1200 have a general instruction with respect to such foreign laws?

• Are the proposed revisions to Instructions to Item 4.D appropriate with respect to foreign private issuers that have extractive activities other than oil and gas producing activities?

V. Impact of Proposed Amendments on Accounting Literature

A. Consistency With FASB and IASB Rules

Several commenters noted that changing the definition of the term ''proved reserves'' in Rule 4–10(a) of Regulation S–X would affect both the full cost accounting treatment of Rule 4–10(c) and the successful efforts accounting treatment of Statement of Financial Accounting Standard No. 19 (SFAS 19).[152] One commenter suggested the Commission consider the impact on the required immediate expensing of seismic tests under SFAS 19.[153] In addition, a revised definition could affect the primary inputs to the standardized measure, such as static operating conditions, year-end prices and costs and the 10% discount rate, which would affect the full cost ceiling under the full cost accounting treatment.[154] These changes could also affect how costs are expensed.[155] Companies should clearly explain the changes in their filings.[156] Commenters recommended that the Commission coordinate corresponding rule changes with the FASB and IASB to ensure

[147] See Appendix A to Item 4.D—Oil and Gas of Form 20–F [17 CFR 249.220f].

[148] We are not proposing changes to Form 40–F, which is the form on which Canadian companies reporting under the multi-jurisdictional disclosure system file Exchange Act registration statements and annual reports with the Commission, because the disclosures regarding oil and gas activities for those companies are not currently governed by our rules.

[149] See proposed Instruction 2 to Item 4.

[150] *Id.*

[151] See proposed Instruction 4.D of Form 20–F.

[152] See letters from D&T, Grant Thornton, and KPMG.

[153] See letter from Audit Quality.

[154] See letters from Audit Quality, KPMG, and PWC.

[155] See letter from KPMG.

[156] *Id.*

consistency of the rules.[157] Some commenters remarked that the IASB is currently considering establishing a set of guidelines for oil and gas extractive activities, including a definition of oil and gas reserves, and recommended that the Commission align its regulations with those guidelines. We intend to discuss our rulemaking project with the FASB and IASB and work with them to harmonize the rules upon effectiveness of the proposed rules, if adopted.

B. Change in Accounting Principle or Estimate

One commenter noted that the proposals would raise the question of whether a change in the definition of proved reserves is a change in accounting principle (which requires retroactive revision of past years) or a change in an estimate caused by a change in accounting principle under SFAS 154.[158] The proposed change in the definition of proved reserves and the change from using single-day year-end price to an average price should be viewed as a change in accounting principle, or a change in the method of applying an accounting principle, that is inseparable from a change in accounting estimate. Therefore, this change would be considered a change in accounting estimate pursuant to Statement of Financial Accounting Standard No. 154 ''Accounting Changes and Error Corrections'' (SFAS 154) and would be accounted for prospectively.

Request for Comment

- Are the proposed changes more properly characterized as a change in accounting principle or a change in estimate under SFAS 154?
- Would it be appropriate to consider the changes as a change in accounting principle, but specify that no retroactive revision of past years would be required?
- If we required retroactive revision of past years, would companies have the historical engineering and scientific data to make such revisions? If not, are there alternatives to retroactive revision that we should consider?

C. Differing Capitalization Thresholds Between Mining Activities and Oil and Gas Producing Activities

As noted elsewhere in this release, extraction of products such as bitumen would be considered oil and gas producing activities, and not mining activities, if we adopt the proposals. Under current U.S. accounting guidance, costs associated with proven plus probable mining reserves may be capitalized for operations extracting products through mining methods, like bitumen. Under the proposed rules, bitumen extraction and operations that produce oil or gas through mining methods would be included under oil and gas accounting rules, which only permit capitalization of costs associated with proved reserves.[159] Moreover, the mining guidelines do not provide specified percentages for establishing levels of certainty for proven or probable reserves for mining activities. It is possible that these differences could result in changing reserves estimates for these resources during the transition to the new rules, if adopted.

Request for Comment

- How should we address these inconsistencies between oil and gas accounting rules and mining accounting rules?
- Should we permit companies that extract, through mining methods, materials from which oil and gas can be produced to continue to capitalize costs under mining rules, or should we require them to capitalize costs based on oil and gas rules? Are there circumstances involved with mining operations, different from oil and gas operations, that justify capitalization of costs of proved plus probable reserves, as opposed to only costs of proved reserves?

D. Price Used To Determine Proved Reserves for Purposes of Capitalizing Costs

Statement of Financial Accounting Standard No. 19 ''Financial Accounting and Reporting by Oil and Gas Producing Companies'' (SFAS 19) requires the units-of-production method to be used for amortizing acquisition costs of proved properties and development costs. As noted above, we are *not* proposing to change the use of the period end price assumption when determining reserves for accounting purposes. Changes in the definition of reserves and the price used to determine whether resources are reserves (i.e., whether they are economically producible) would impact the determination of the quantity of reserves, and therefore would impact the amount of amortization expense that is recorded in the income statement. It is expected that, for most companies, based on the relationship between the amount of proved reserves and the production in a given period, the impact of such a change on the financial statements would not be significant and would not have a significant impact on comparability between periods.

Request for Comment

- Would the effect of such changes be material or have a material effect on historical amortization levels?
- Would the effect of such changes be material or have a material effect on comparability? Please provide any empirical evidence to support your conclusion.
- Would it be appropriate to continue to require the use of the year-end price for purposes of determining reserves for purposes of amortization expense while using a different price for purposes of disclosing reserves estimates in Commission filings? This would result in a different value associated with the use of the term ''proved reserves'' for purposes of disclosure, as opposed to the use of that term for purposes of accounting. Would this be confusing? Should we use a different term? Should we otherwise clarify the two different meanings of that term in different contexts?

VI. Impact of the Proposed Codification of Industry Guide 2 on Other Industry Guides

There currently are six Securities Act Industry Guides:

- Guide 2—Disclosure of oil and gas operations;
- Guide 3—Statistical disclosure by bank holding companies;
- Guide 4—Prospectuses relating to interests in oil and gas programs;
- Guide 5—Preparation of registration statements relating to interests in real estate limited partnerships;
- Guide 6—Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters; and
- Guide 7—Description of property by issuers engaged, or to be engaged, in significant mining operations.

There also are four Exchange Act Industry Guides:

- Guide 2—Disclosure of oil and gas operations;
- Guide 3—Statistical disclosure by bank holding companies;
- Guide 4—Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty underwriters; and
- Guide 7—Description of property by issuers engaged, or to be engaged, in significant mining operations.

As discussed above, the specific disclosures that relate to oil and gas operations currently are set forth in both Securities Act and Exchange Act

[157] See letters from Audit Quality, CFA, KPMG, and PWC.

[158] See letter from Audit Quality.

[159] See Rule 4–10(c) of Regulation S–X [17 CFR 210.4–10(c)].

Industry Guide 2, as well as Securities Act Industry Guide 4. The codification of the Industry Guide 2 disclosures that we are proposing in this release should not have any impact on the manner in which the other Industry Guides are applied to company disclosures. Those guides will remain in effect in their current form and companies in the industries to which the guides relate will continue to include disclosure in response to the guides in their Securities Act and Exchange Act filings. In the future, the staff plans to review and update each of the Industry Guides; as part of the initiative to update a particular guide, we would propose to codify it as a new subpart of Regulation S–K.

Request for Comment

- Is it appropriate to codify Industry Guide 2 separately from the other industry guides? Should we merely amend Industry Guide 2 and codify it with all of the other industry guides when they have been updated?
- Would the codification of Industry Guide 2 overrule or otherwise affect any of the disclosures required in the other Industry Guides?

VII. Solicitation of Comment Regarding the Application of Interactive Data Format to Oil and Gas Disclosures

Many oil and gas companies already present much of their oil and gas disclosure in tabular form. In this release, we propose to require that disclosure in tabular form. Such tabular disclosure appears to be conducive to presentation in an interactive data format that uses a standard list of electronic tags that a variety of software applications can recognize and process. We recently proposed to require that financial statement information be presented in interactive data format in addition to the currently required format.[160] We seek comment on the desirability of rules that would permit, or require, oil and gas companies to present the tabular disclosures in proposed Subpart 1200 in interactive data format in addition to the currently required format. We note that at this time, there is no well-developed standard list of electronic tags for the tabular disclosure proposed in this release.

Request for Comment

- Should we adopt rules that require oil and gas disclosures to be provided in interactive data format? Instead of requiring such formatting, should we only permit the filing of oil and gas disclosures in interactive data format? What are the principal factors that we should consider in making these decisions?
- If we require oil and gas disclosures to be filed in interactive data format, should we provide for a voluntary phase-in period to create a well-developed standard list of electronic tags? Without a requirement, would the development of products for using interactive data meet the needs of investors, analysts, and others who seek to use interactive data? Would a large percentage of oil and gas companies provide interactive data voluntarily and follow the same standard, if not required to do so?
- Would investors, analysts, and others find presentation of oil and gas disclosures helpful if presented in interactive data format? In what ways would such users of the information find such a format beneficial?
- As we note above, there is not currently a well-developed standard list of electronic tags for the oil and gas disclosures. Are there any obstacles to creating a useful standard list of electronic tags for the oil and gas disclosures? Is the type of data presented in the proposed table conducive to interactive data format? Would it be particularly difficult to create standard electronic tags for any of the proposed data? Would there be any obstacles to providing comparable data in interactive format?
- Would it be useful for the data in the proposed tables to interact with other data in Commission filings? If so, which data?
- If we adopt rules requiring oil and gas disclosures in interactive data format, should we require the use of the eXtensible Business Reporting Language (XBRL) standard? Are any other standards becoming more widely used or otherwise superior to XBRL? What would the advantages of any such other standards be over XBRL?

VIII. Proposed Implementation Date

We propose to require companies to begin complying with the proposed disclosure requirements, if adopted, for registration statements filed on or after January 1, 2010, and for annual reports on Forms 10–K and 20–F for fiscal years ending on December 31, 2009, and after. We believe that this time period would be appropriate to enable companies to familiarize themselves with the new rules. We would require that all companies begin complying with the disclosure requirements at the same time to maximize comparability of disclosure. Therefore, we would not permit early adoption of the proposed disclosure requirements.

Request for Comment

- Should we provide a delayed compliance date, as proposed above? If so, is the proposed date appropriate? Should we provide more or less time for companies to familiarize themselves with the proposed amendments?
- If we provide a delayed compliance date, should we permit early adoption by companies?

IX. General Request for Comment

We request and encourage any interested person to submit comments regarding:

- The proposed rule changes and additions that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors, and other users of information about the disclosures that should be required with regard to oil and gas companies and the corresponding definitions of terms used in those disclosure requirements.

X. Paperwork Reduction Act

A. Background

The proposed rules and amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[161] We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.[162] The titles for this information are:

(1) ''Regulation S–K'' (OMB Control No. 3235–0071);[163]

(2) ''Industry Guides'' (OMB Control No. 3235–0069);

(4) ''Form S–1'' (OMB Control No. 3235–0065);

(5) ''Form S–4'' (OMB Control Number 3235–0324);

(6) ''Form F–1'' (OMB Control Number 3235–0258);

(7) ''Form F–4'' (OMB Control Number 3235–0325);

(8) ''Form 10'' (OMB Control No. 3235–0064);

[160] See Release No. 33–8924 (May 30, 2008) [73 FR 32794].

[161] 44 U.S.C. 3501 *et seq.*

[162] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[163] The paperwork burden from Regulation S–K and the Industry Guides is imposed through the forms that are subject to the disclosures in Regulation S–K and the Industry Guides and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by each of Regulation S–K and the Industry Guides to be a total of one hour.

(9) ''Form 10–K'' (OMB Control No. 3235–0063); and

(10) ''Form 20–F'' (OMB Control No. 3235–0063).

We adopted all of the existing regulations and forms pursuant to the Securities Act and the Exchange Act. These regulations and forms set forth the disclosure requirements for annual reports [164] and registration statements that are prepared by issuers to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions.

Our proposed amendments to these existing forms are intended to modernize and update our reserves definitions to better reflect changes in the oil and gas industry and markets and new technologies that have occurred in the decades since the current rules were adopted, including expanding the scope of permissible technologies for establishing certainty levels of reserves, reserves classifications that a company can disclose in a Commission filing, and the types of resources that can be included in a company's reserves, as well as providing information regarding the objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit, and the qualifications and measure taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates. The proposals also are intended to codify, modernize, and centralize the disclosure items for oil and gas companies into Regulation S–K. Finally, the proposals are intended to harmonize oil and gas disclosures by foreign private issuers with disclosures by domestic companies. Overall, the proposed amendments attempt to provide improved disclosure about an oil and gas company's business and prospects without sacrificing clarity and comparability, which provide protection and transparency to investors.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Much, but not all, of the information collection requirements related to annual reports and registration statements would be mandatory. There would be no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

The proposals would increase existing disclosure burdens for annual reports on Forms 10–K [165] and 20–F and registration statements on Forms 10, 20–F, S–1, S–4, F–1, and F–4 by creating the following new disclosure requirements, many of which were requested by industry participants:

- Disclosure of reserves from non-traditional sources (*i.e.*, bitumen, shale, coalbed methane) as oil and gas reserves;
- Optional disclosure of probable and possible reserves;
- Optional disclosure of oil and gas reserves' sensitivity to price;
- Disclosure of the development of proved undeveloped reserves, including those that are held for five years or more and an explanation of why they should continue to be considered proved;
- Disclosure of technologies used to establish additions to reserves estimates;
- Disclosure regarding material changes due to technology, prices, and concession conditions;
- The objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit;
- The qualifications and measures taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates;
- If a company represents that it is relying on a third party to prepare the reserves estimates or conduct a reserves audit, filing a report prepared by the third party; and
- Disclosure based on a new definition of the term ''by geographic area.''

In addition, the amendments would harmonize the disclosure requirements that apply to foreign private issuers with the disclosure requirements that apply to domestic issuers with respect to oil and gas activities. In particular, the proposal would require foreign private issuers to disclose the information required by proposed Items 1205 through 1208 of Regulation S–K regarding drilling activities, present activities, delivery commitments, wells, and acreage, which they are not required to provide currently under Appendix A to Form 20–F. These proposed disclosure items present the substantive disclosures currently called for by Items 4 through 8 of Industry Guide 2, but are not included specifically in Appendix A to Form 20–F, although much of this disclosure may be included in the more general discussions of business and property on that form.

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we estimate the total annual increase in the paperwork burden for all affected companies to comply with our proposed collection of information requirements to be approximately 7,472 hours of in-house company personnel time and to be approximately $1,659,000 for the services of outside professionals.[166] These estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. Our methodologies for deriving the above estimates are discussed below.

Our estimates represent the burden for all oil and gas companies that file annual reports or registration statements with the Commission. Based on filings received during the Commission's last fiscal year, we estimate that 241 oil and gas companies file annual reports and 67 oil and gas companies file registration statements. Most of the information called for by the new proposed disclosure requirements, including the optional disclosure items, is readily available to oil and gas companies and includes information that is regularly used in their internal management systems. These proposed disclosures include:

[164] The pertinent annual reports are those on Forms 10–K and 20–F.

[165] The proposed disclosure requirements regarding oil and gas properties and activities are in Form 10–K as well as the annual report to security holders required pursuant to Rule 14a–3(b) [17 CFR 240.14a–3(b)]. Form 10–K permits the incorporation by reference of information in the Rule 14a–3(b) annual report to security holders to satisfy the disclosure requirements of Form 10–K. The analysis that follows assumes that companies would either provide the proposed disclosure in a Form 10–K only, if the company is not subject to the proxy rules, or would incorporate the required disclosure into the Form 10–K by reference to the Rule 14a–3(b) annual report to security holders if the company is subject to the proxy rules. This approach takes into account the burden from the proposed disclosure requirements that are included in both the Form 10–K and in Regulation 14A or 14C.

[166] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest thousand.

- Information on the company's development of proved undeveloped reserves;
- Technologies that the company used to establish additions to reserves estimates;
- Material changes to reserves estimates due to technology, prices, and concession conditions;
- The objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit;
- The qualifications and measures taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates;
- The report of a third party preparer or reserves auditor, if one is used;
- Disclosure of reserves by geographic area; and
- Optional disclosure of probable and possible reserves and a sensitivity analysis.

We estimate that, on average, companies will incur a burden of 35 hours to prepare these disclosures in an annual report or registration statement.

The proposed amendments would not require, or request, companies to disclose probable and possible reserves. Rather, the proposed rules only would remove the current prohibition on companies from disclosing this information in their filings with the Commission. As we have noted, many companies already disclose this information on their Web sites. Similarly, commenters on the Concept Release noted that many companies already use such estimates in their business decisions. Our rules also do not dictate how companies generate estimates for probable and possible reserves. Thus, we have not included an estimate of the burden and cost of preparing probable and possible reserves estimates in this PRA analysis, but we have included the burden and cost of disclosing such information.

The proposed amendments would apply several disclosure items to foreign private issuers that previously did not apply to them. As noted above, many of these disclosure items, such as drilling activities, wells and acreage, would require the issuer to provide more specificity about its business and property. Foreign private issuers that do not currently provide such specificity would incur an added burden to present such disclosures in their filings. We estimate that this burden would be 20 hours per foreign private issuer.

The proposed amendments would include reserves from non-traditional sources (*e.g.*, bitumen and oil shale) as oil and gas reserves. Such reserves currently are required to be disclosed as reserves related to mining operations. Although there are differences in the way such reserves may be calculated, such as different levels of certainty, the processes involved in estimating such reserves do not differ significantly. We believe that there would be no change in the relative burden for estimating these reserves under the oil and gas rules, as opposed to the mining rules.

Consistent with current Office of Management and Budget estimates and recent Commission rulemakings, we estimate that 25% of the burden of preparation of registration statements on Forms S–1, S–4, F–1, F–4, 10, and 20–F is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[167] We estimate that 75% of the burden of preparation of annual reports on Form 10–K or Form 20–F is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the company at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. The following tables summarize the changes to the PRA estimates:

TABLE 1.—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR EXCHANGE ACT PERIODIC REPORTS

Form	Annual responses	Incremental hours/form	Incremental burden	75% Issuer	25% Professional	$400 Professional cost
	(A)	(B)	(C) = (A)*(B)	(D) = (C)*0.75	(E) = (C)*0.25	(F) = (E)*$300
10–K[168]	206	35	7,210	5,408	1,803	721,000
20–F	35	55	1,925	1,444	481	192,500
Total	241		9,135	6,851	2,284	913,500

TABLE 2.—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR SECURITIES ACT REGISTRATION STATEMENTS AND EXCHANGE ACT REGISTRATION STATEMENTS

	(A)	(B)	(C) = (A)*(B)	(D) = (C)*0.25	(E) = (C)*0.75	(F) = (E)*$300
10	5	35	175	44	131	52,500
20–F	2	55	110	28	83	33,000
S–1	38	35	1,330	333	998	399,000
S–4	17	35	595	149	446	178,500
F–1	2	55	110	28	83	33,000
F–4	3	55	165	41	124	49,500
Total	67		2,485	621	1864	745,500

[167] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings.

[168] The burden estimates for Form 10–K assume that the proposed requirements are satisfied by either including information directly in the annual reports or incorporating the information by reference from the Rule 14a–3(b) annual report to security holders.

D. Request for Comment

We request comment in order to evaluate the accuracy of our estimate of the burden of the collections of information. Any member of the public may direct to us any comments concerning the accuracy of these burden estimates. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of the comments to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–15–08. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–15–08, and be submitted to the Securities and Exchange Commission, Records Management Branch, 100 F Street, NE., Washington, DC 20549–1110. Because OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if OMB receives them within 30 days of publication.

XI. Cost-Benefit Analysis

A. Background

We are proposing revisions to the oil and gas reserves disclosure requirements of Regulation S–K and Regulation S–X under the Securities Act of 1933 and the Securities Exchange Act of 1934 and Industry Guide 2. The proposed revisions are intended to modernize and update the Commission's oil and gas disclosure requirements because modern technologies enables better estimates, and therefore more helpful disclosure to investors. The oil and gas industry has experienced significant changes since the Commission initially adopted its current rules and disclosure requirements between 1978 and 1982, including advancements in technology and changes in the types of projects in which oil and gas companies invest. The proposed revisions also are intended to provide investors with improved disclosure about an oil and gas company's business and prospects without sacrificing clarity and comparability, which provide protection and transparency to investors.

B. Description of Proposal

Currently, Industry Guide 2 specifies many of the disclosure guidelines for oil and gas companies. The Industry Guide calls for disclosure relating to reserves, production, property, and operations in addition to that which is required by Regulation S–K. Although the Industry Guide itself does not appear in Regulation S–K or in the Code of Federal Regulations, it is referenced in an instruction to Item 102 of Regulation S–K (Description of Property) and also is included in the listing of Industry Guides in Items 801 and 802 of Regulation S–K. Generally, the proposal would codify the existing disclosures of Industry Guide 2 into a new Subpart 1200 of Regulation S–K, while at the same time updating such disclosures, clarifying the level of detail required to be disclosed, and requiring disclosure in a tabular presentation. The proposed changes would accomplish the following:

- Disclosure of reserves from non-traditional sources (*e.g.*, bitumen and oil shale) as oil and gas reserves;
- Optional disclosure of probable and possible reserves;
- Optional disclosure of oil and gas reserves' sensitivity to price;
- Disclosure of the development of proved undeveloped reserves, including those that are held for five years or more and an explanation of why they should continue to be considered proved;
- Disclosure of technologies used to establish additions to reserves estimates;
- Disclosure regarding material changes due to technology, prices, and concession conditions;
- The objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit;
- The qualifications and measures taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates;
- If a company represents that it is relying on a third party to prepare the reserves estimates or conduct a reserves audit, filing a report prepared by the third party; and
- Disclosure based on a new definition of the term ''by geographic area.''

The proposal also would make revisions and additions to the definitions section of Rule 4–10 of Regulation S–X. These revisions would update and extend reserves definitions to reflect changes in the oil and gas industry and new technologies. The revisions are intended to address perceived inadequacies in existing definitions while maintaining standards of clarity and comparability that provide protection and transparency to investors. In particular, the proposal would:

- Expand the definition of ''oil and gas producing activities'' to include the extraction of hydrocarbons from oil sands, shale, coalbeds, or other natural resources and activities undertaken with a view to such extraction;
- Add a definition of ''reasonable certainty'' to provide better guidance regarding the meaning of that term;
- Add a definition of ''reliable technology'' to permit the use of new, widely accepted technologies to establish proved reserves;
- Define probable and possible reserves estimates; and
- Add definitions to explain new terms used in the revised definitions.

In addition, the amendments would harmonize the disclosure requirements that apply to foreign private issuers with the disclosure requirements that apply to domestic issuers with respect to oil and gas activities. In particular, the proposal would require foreign private issuers to disclose the information required by proposed Items 1205 through 1208 regarding drilling activities, present activities, delivery commitments, wells, and acreage, which they are not required to provide currently under Appendix A to Form 20–F. These proposed disclosure items present the substantive disclosures currently called for by Items 4 through 8 of Industry Guide 2, but are not included specifically in Appendix A to Form 20–F, although much of this disclosure may be included in the more general discussions of business and property on that form.

C. Benefits

We expect that the proposed rules would increase transparency in disclosure by oil and gas companies by providing improved reporting standards. The proposed revisions to the definitions should align our disclosure rules with the realities of the modern oil and gas markets. For example, we believe that the inclusion of bitumen and other resources from continuous accumulations as oil and gas producing activities is consistent with company practice to treat these operations as part of, rather than separate from, their traditional oil and gas producing activities. Similarly, the proposed expansion of permissible technologies for determining certainty levels of reserves recognizes that companies now take advantage of these technological advances to make business decisions. We expect these proposals to improve disclosure by aligning the required

disclosure more closely with the way companies conduct their business.

Allowing companies to disclose probable and possible reserves is designed to improve investors' understanding of a company's unproved reserves. For those companies that already disclose such reserves on their Web sites, the proposals would permit them to make such disclosures more accessible to investors. Disclosure of these categories of reserves beyond proved reserves may foster better company valuations by investors, creditors, and analysts, thus improving capital allocation and reducing investment risk. Because some of the proposed disclosure requirements are optional, the amount of increased transparency will depend on the extent to which companies elect to provide the additional disclosure afforded by the proposal. If companies elect not to provide the optional disclosure, then the benefits from increased transparency would be limited to the extent that the new rules improve the transparency of proved reserves disclosure. We expect that replacing the Industry Guide with new Regulation S–K items would provide greater certainty because the disclosure requirements would be in rules established by the Commission.

By permitting increased disclosure, the proposal provides a mechanism for oil and gas companies to seek more favorable financing terms through more disclosure and increased transparency. Investors may be able to request such additional disclosure in Commission filings during negotiations regarding bond and debt covenants. Thus, we expect that, as a result of competing factors in the marketplace, the proposal would result in increased transparency, either because companies elect to voluntarily provide increased disclosure, or because investors may discount companies that do not do so. We believe that the benefits and costs of disclosing unproved reserves ultimately will be determined by market conditions, rather than regulatory requirements.

We expect that permitting companies to disclose probable and possible reserves would increase market transparency, provide investors with more reserves information, and allow for more accurate production forecasts. By correlating deterministic criteria to comparable probabilistic thresholds for establishing a given level of certainty, the proposed rules should result in increased standardization in reporting practices which would promote comparability of reserves across companies. The proposal would define the term ''reliable technology'' to permit oil and gas companies to prepare their reserves estimates using new types of technology that companies are not permitted to use under the current rules. This proposed definition is designed to encompass new technologies as they are developed in the future and become widely accepted, thereby providing investors and the market with a more comprehensive understanding of a company's estimated reserves.

1. Average Price

The proposal to change the price used to calculate reserves from a year-end single-day price to an historical average price over the company's most recently ended fiscal year is expected to reduce the effects of seasonality and facilitate comparability between companies. Many of the commenters to the Concept Release supported the use of an historical price, even though this approach is less useful with respect to a company's future prospects compared to a futures market price. We believe investors are concerned not only about the quantity of a company's reserves, but also about the profitability of those reserves. We recognize that some reserves will be of more value than others due to extraction and transportation costs. As a result, since our proposal would require the use of a single price to estimate reserves, the proposal also gives companies the option of providing a sensitivity analysis and reporting reserves based on additional price estimates. If companies elect to provide a sensitivity analysis, we expect this to benefit investors by allowing them to formulate better projections of company prospects that are more consistent with management's planning price and prices higher and lower that may reasonably be achieved. We expect that companies would be more likely to adopt a sensitivity analysis approach if investors and other market participants determine that this information would reduce investment risk, or if companies believe such disclosure will reduce the cost of capital formation. The proposal would result in increased price stability in determining whether reserves are economically producible. This should mitigate seasonal effects, resulting in reserves estimates that more closely reflect those used by management in planning and investment decisions. We expect this to allow for more accurate company valuations and improve projections of company prospects.

2. Probable and Possible Reserves

We anticipate that disclosure of probable and possible reserves, if companies elect to do so, would allow investors, creditors, and other users to better assess a company's reserves. The proposed tabular format for disclosing probable and possible reserves should reduce investor search costs by making it easier to locate reserves disclosures and facilitating comparability among oil and gas companies.

While we recognize that many companies already communicate with investors about their unproved and other reserves through alternative means, such as company Web sites or press releases, some commenters remarked that an objective comparison among companies is difficult because different companies have defined such reserves classifications differently. We believe that permitting disclosure of this information in Commission filings would provide a more consistent means of comparison. Although our proposal would make disclosure of probable and possible reserves optional, and large oil and gas producers suggested in their comment letters that such disclosure would be of limited benefit, we believe that competitive pressures within the industry might make it beneficial for large producers to disclose this information. Increased disclosure might, for example, improve credit quality and lower the cost of debt financing, or reduce the risk associated with business transactions between the company and its customers or suppliers.

3. Reserves Estimate Preparers and Reserves Auditors

We believe that investors would benefit from a greater level of assurance with respect to the reliability of reserve estimates. The proposed disclosure requirements relating to the objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit, and the qualifications and measures taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates should provide greater confidence with respect to the accuracy of reserves estimates. Unproved reserves are inherently less certain than proved reserves. Although not all companies would choose to undertake a reserves audit, because the proposal would not require such a reserves audit, third party participation in the estimation of reserves should add credibility to a company's public disclosure. The opinion of an objective, qualified person on the reserves estimates is designed to increase the reliability of these estimates and investor confidence.

4. Development of Proved Undeveloped Reserves

The proposal would require tabular disclosure of the aging of proved undeveloped reserves. We believe that such disclosure supplements our proposed amendments that would ease the requirements for recognizing PUDs and thereby increase the amount of PUDs disclosed in filings, even though the properties representing such proved reserves have not yet been developed and therefore do not provide the company with cash flow.

5. Disclosure Guidance

The proposal also provides guidance about the type of information that companies should consider disclosing in Management's Discussion and Analysis, and would allow companies to include this information with the relevant tables. Locating this discussion with the tables themselves should benefit investors by simplifying the presentation of disclosure, and providing insight into the information disclosed in the tables. Providing the additional guidance should assist companies in preparing their disclosure, improving the quality and consistency of this disclosure.

6. Updating of Definitions Related to Oil and Gas Activities

The proposal also updates the definition of the term ''oil and gas producing activities'' as well as updating or creating new definitions for other terms related to such activities, including ''proved oil and gas reserves'' and ''reasonable certainty.'' We believe that updating these definitions will help companies disclose oil and gas operations in the same way that companies manage those operations. This includes resources extracted from nontraditional sources that companies consider oil and gas activities, although our definitions have excluded them from the definition of ''oil and gas producing activities.'' In addition, adding definitions for terms like ''reasonable certainty'' (which currently is in the definition of ''proved oil and gas reserves,'' but not defined) will provide companies with added guidance and assist them in providing consistent disclosures between companies.

7. Harmonizing Foreign Private Issuer Disclosure

We believe that the proposals to harmonize foreign private issuer disclosure would help make disclosures of foreign private issuers more comparable with domestic companies. The oil and gas industry has changed significantly since the rules were adopted. Today, many companies have interests that span the globe. In addition, many of these projects are joint ventures between foreign private issuers and domestic companies. Having differing levels of disclosure for companies that may be participating in the same projects harms comparability between investment choices. The proposal to harmonize foreign private issuer disclosure is intended to promote comparability among all oil companies.

D. Costs

We expect that the proposed amendments would result in some initial and ongoing costs to oil and gas companies. Although we are proposing to add a new subpart to Regulation S–K to set forth the disclosure requirements that are unique to oil and gas companies, the proposed subpart, for the most part, codifies the substantive disclosure called for by Industry Guide 2. The proposed disclosure requirements have been updated and clarified, and require the disclosure to be presented in a tabular format. Although many companies already present this information in tabular form, for companies that do not, this proposed requirement could impose a burden on companies as they transition from a narrative to tabular disclosure format. We expect, however, that any increased preparation costs would be highest in the first year after adoption, but would decline in subsequent years as companies adjust to the new format. We think this burden is justified because tabular disclosure will increase comparability and facilitate understanding and analysis by investors.

1. Probable and Possible Reserves

Allowing disclosure of probable and possible reserves could create an increased risk of litigation because these categories of reserves estimates are less certain than proved reserves. Companies may choose not to disclose such reserves, in part, because of the risk of incurring litigation costs to defend their disclosures due to the increased risk and uncertainty of these categories. Disclosure of probable and possible reserves may also result in revealing competitive information because it might reveal a company's business strategy, such as the geography and nature of their exploration and discovery. For example, if geographical detail can be inferred from estimates of unproved reserves, this might reveal information about the value of a company's assets to competitors and could put the producer at a competitive disadvantage. We expect companies would incur costs in preparing the additional disclosures such as calculating and aggregating the reserve projections in a prescribed format. If probable and possible categories of reserves have different extraction cost structures, particularly with respect to time, and they are not sufficiently separated from proved reserves, this could result in increased uncertainty in an investor's assessment of a company's prospects. We believe that making these disclosures voluntary mitigates these concerns. Companies unwilling to bear the added risk can simply opt not to provide this disclosure.

2. Reserves Estimate Preparers and Reserves Auditors

If a company chooses to use a third party to prepare or audit reserve estimates, it would incur costs to hire these outside consultants. The proposed amendments would not require companies to hire such a person. If enough companies that currently do not use such consultants begin to hire them, we believe that industry wages could potentially increase due to increased demand for reserves calculating specialists unless that demand is compensated by an increase in the supply of such persons. If wages increased, then all companies, not just those employing third party consultants, would incur added costs.

Large companies may be less likely to hire third parties because they tend to have staff to make reserves estimates. However, if such large companies chose to hire third party consultants, third parties would expend significantly more effort on such projects than for smaller companies because larger companies have more properties to evaluate. Thus, we expect third party fees, and the time required to conduct such projects, would scale upwards with the quantity of company reserves.

Disclosure of unproved reserves without third party certification may present a risk with respect to smaller oil and gas producers. Because smaller companies are likely to have less in-house expertise, and less market reputation, than larger companies, this could increase the need for certification. We believe that making the third party involvement optional is similar to the current approach. Current disclosures of proved reserves do not require a third party to audit the reserves estimates, and oil and gas producers already release, as discussed above, unproved reserve information through other means. Thus, even if companies do not choose to use a third party to audit their reserves estimates, the disclosure of

unproved reserves with improved standards on how such reserves should be reported, should benefit investors.

3. Average Price

While the use of an historical average price to calculate reserves should enhance comparability, it would provide investors with less forward-looking information than if we were to adopt a price standard based on futures prices. Forward-looking prices based on futures, however, are not necessarily available for all products in all geographic areas and would require adjustments.

4. Consistency With IASB

Some commenters remarked that the International Accounting Standards Board is currently preparing a set of guidelines for oil and gas extractive activities, including a definition of oil and gas reserves, and recommended that the Commission align its regulations with those guidelines. We intend to monitor this initiative and work with the IASB, but our proposal may differ from the guidelines ultimately established by the International Accounting Standards Board. This could make it more difficult for investors to compare foreign and domestic companies.

5. Harmonizing Foreign Private Issuer Disclosure

The proposal to harmonize foreign private issuer disclosure regarding oil and gas activities would increase the burden on foreign private issuers. However, it is our understanding that the large foreign private issuers already voluntarily provide disclosure comparable to the level required from domestic companies. Much of the added new disclosures relate to the day-to-day business and properties of these companies, including drilling activities, number of wells and acreage. This is information that is central to the activities of oil and gas companies, and therefore is readily known to these companies. We believe that applying the proposed Subpart 1200 to these companies could prompt more detailed disclosure regarding these activities, which would cause these companies to incur some cost. The provision permitting foreign private issuers to omit disclosures if prohibited from making those disclosures by their home jurisdiction could mitigate some of these costs.

E. Request for Comments

We request comment on all aspects of the Cost-Benefit Analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. We also request that those submitting comments provide, to the extent possible, empirical data and other factual support for their views.

XII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Securities Act section 2(b) [169] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [170] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act [171] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

We expect the proposed amendments, if adopted, to increase efficiency and enhance capital formation, and thereby benefit investors, by providing the market with better information based on updated technology as well as increased information covering a broader range of reserves classifications held by a company and reserves found in non-traditional sources of oil and gas. Such increased and improved information would permit investors to better assess a company's prospects. In particular, the existing prohibitions against disclosing reserves other than proved reserves, using modern technology to determine the certainty level of reserves, and including resources from non-traditional sources can lead to incomplete disclosures about a company's actual resources and prospects. The proposals are designed to better align the disclosure requirements with the way companies make business decisions.

We believe that permitting the disclosure of probable and possible reserves will benefit smaller companies, in particular. Larger issuers tend to already have large amounts of proved reserves. The proposals would permit smaller companies, who often participate in a significant amount of exploratory activity, to better disclose their business prospects. Consequently, we anticipate that the proposal, if adopted, could lead to efficiencies in capital formation, as more information would be available regarding the prospects of smaller issuers.

The effects of the proposed amendments on competition are difficult to predict, but it is possible that permitting public issuers to disclose probable and possible reserves will lead to a reallocation of capital, as companies that previously could show few proved reserves would be able to disclose a broader range of its business prospects, making it easier for these issuers to raise capital and compete with companies that have large proved reserves. Although our proposal would make disclosure of probable and possible reserves optional, and large oil and gas producers suggested in their comment letters that such disclosure would be of limited benefit, we believe that competitive pressures within the industry might make it beneficial for large producers to disclose this information. Increased disclosure might, for example, improve credit quality and lower the cost of debt financing, or reduce the risk associated with business transactions between the company and its customers or suppliers.

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

XIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to disclosure items for oil and gas companies.

A. Reasons for, and Objectives of, the Proposed Action

The Commission adopted the current disclosure regime for oil and gas producing companies in 1978 and 1982, respectively. Since that time, there have been significant changes in the oil and gas industry and markets, including technological advances, and changes in the types of projects in which oil and

[169] 15 U.S.C. 77b(b).

[170] 15 U.S.C. 78w(a)(2).

[171] 15 U.S.C. 78c(f).

gas companies invest their capital. On December 12, 2007, the Commission published a Concept Release on possible revisions to the disclosure requirements relating to oil and gas reserves.[172] Prior to our issuance of the Concept Release, many industry participants had expressed concern that our disclosure rules are no longer in alignment with current industry practices and therefore have limited usefulness to the market and investors.

Our proposed amendments to these existing forms are intended to modernize and update our reserves definitions to reflect changes in the oil and gas industry and markets and new technologies that have occurred in the decades since the current rules were adopted, including expanding the scope of permissible technologies for establishing certainty levels of reserves, reserves classifications that a company can disclose in a Commission filing, and the types of resources that can be included in a company's reserves, as well as providing information regarding the objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit, and the qualifications and measures taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates. The proposals also are intended to codify, modernize and centralize the disclosure items for oil and gas companies into Regulation S–K. Finally, the proposals are intended to harmonize oil and gas disclosures by foreign private issuers with disclosures by domestic companies. Overall, the proposed amendments attempt to provide improved disclosure about an oil and gas company's business and prospects without sacrificing clarity and comparability, which provide protection and transparency to investors.

B. Legal Basis

We are proposing the amendments pursuant to sections 3(b), 6, 7, 10 and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act, as amended.

C. Small Entities Subject to the Proposed Amendments

The proposals would affect small entities that are engaged in oil and gas producing activities, the securities of which are registered under Section 12 of the Exchange Act or that are required to file reports under section 15(d) of the Exchange Act. The proposals also would affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. Securities Act Rule 157 [173] and Exchange Act Rule 0–10(a) [174] define an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We believe that the proposals would affect small entities that are operating companies. Based on filing in 2007, we estimate that there are approximately 28 oil and gas companies that may be considered small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments to Regulation S–K would expand some existing disclosures, and eliminate others. In particular, the proposed new disclosure requirements, many of which were requested by industry participants, include the following:

- Disclosure of reserves from non-traditional sources (*e.g.*, bitumen and shale) as oil and gas reserves;
- Optional disclosure of probable and possible reserves;
- Optional disclosure of oil and gas reserves' sensitivity to price;
- Disclosure of the development of proved undeveloped reserves, including those that are held for 5 years or more and an explanation of why they should continue to be considered proved;
- Disclosure of technologies used to establish additions to reserves estimates;
- Disclosure regarding material changes due to technology, prices, and concession conditions;
- Disclosure of the objectivity and qualifications of any third party primarily responsible for preparing or auditing the reserves estimates, if the company represents that it has enlisted a third party to conduct a reserves audit;
- Disclosure of the qualifications and measures taken to assure the independence and objectivity of any employee primarily responsible for preparing or auditing the reserves estimates;
- If a company represents that it is relying on a third party to prepare the reserves estimates or conduct a reserves audit, filing a report prepared by the third party; and
- Disclosure based on a new definition of the term ''by geographic area.''

There would be no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that there are no federal rules that conflict with or duplicate the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(1) Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;

(2) Exempting smaller entities from coverage of the disclosure requirements, or any part thereof;

(3) The clarification, consolidation, or simplification of disclosure for small entities; and

(4) Use of performance standards rather than design standards.

With regard to Alternatives 1 and 2, we believe that separate disclosure requirements for small entities that would differ from the proposed reporting requirements, or exempting them from these disclosures, would not achieve our disclosure objectives. In particular, we believe the changes that are reflected in the proposed amendments would balance the informational needs of investors in smaller companies with the burdens imposed on such companies by the disclosure requirements. We note that a number of the proposed new disclosure items are voluntary. We believe that small entities are more likely to take advantage of these permitted disclosures, particularly regarding probable and possible reserves, than larger companies, which typically already have significant proved reserves. A wholesale exemption for small entities would thwart our intent to make uniform the application of the disclosure and other requirements that would be amended.

Regarding Alternative 3, we believe the amendments would clarify and consolidate the requirements for all public companies into Regulation S–K, which may make such requirements easier to access. This may simplify the process of preparing a company's annual report or registration statement. In addition, the proposed tabular format

[172] See Release No. 33–8870 (Dec. 12, 2007) [72 FR 71610].

[173] 17 CFR 230.157.

[174] 17 CFR 240.0–10(a).

for making the disclosures may lead to systemization of the disclosures, making such information simpler to organize.

Regarding Alternative 4, we have used design rather than performance standards in connection with the proposals for two reasons. First, based on our past experience, we believe the proposed disclosure would be more useful to investors if there were specific informational requirements. The proposed mandated disclosures are intended to result in more focused and comprehensive disclosure. Second, the specific disclosure requirements in the proposals would promote more comparable disclosure among public companies because they would provide greater certainty as to the scope of required disclosure.

G. Solicitation of Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed revisions; (ii) the existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments.

XIV. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[175] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment, or innovation.

[175] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

XV. Statutory Basis and Text of Proposed Amendments

We are proposing the amendments pursuant to sections 3(b), 6, 7, 10 and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act, as amended.

Text of Proposed Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

2. Amend § 210.4–10 by:

a. Redesignating the subparagraphs in paragraph (a) as follows:

Old paragraph number	New paragraph number
(a)(1)	(a)(16)
(a)(2)	(a)(24)
(a)(3)	(a)(22)
(a)(4)	(a)(25)
(a)(5)	(a)(23)
(a)(6)	(a)(34)
(a)(7)	(a)(21)
(a)(8)	(a)(15)
(a)(9)	(a)(29)
(a)(10)	(a)(13)
(a)(11)	(a)(9)
(a)(12)	(a)(32)
(a)(13)	(a)(33)
(a)(14)	(a)(1)
(a)(15)	(a)(12)
(a)(16)	(a)(7)
(a)(17)	(a)(20)

b. Adding new paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(8), (a)(10), (a)(11), (a)(14), (a)(17), (a)(18), (a)(19), (a)(26), (a)(27), (a)(28), (a)(30), and (a)(31); and

c. Revising newly redesignated paragraphs (a)(13), (a)(16), (a)(22), (a)(24), and (a)(25).

The additions and revisions read as follows:

§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(a) * * *

* * * * *

(2) *Analogous formation in the immediate area.* An ''analogous formation in the immediate area'' refers to a formation that shares the following characteristics with the formation of interest:

(i) Same geological formation;

(ii) Same environment of deposition;

(iii) Similar geological structure; and

(iv) Same drive mechanism.

Instruction to paragraph (a)(2): Reservoir properties must be no more favorable in the analog than in the formation of interest. When the geological properties change, the proposed analog formation can no longer be said to be an analogous formation in the immediate area of the formation of interest.

(3) *Condensate.* Condensate is a mixture of hydrocarbons that exists in the gaseous phase at original reservoir temperature and pressure, but that, when produced, is in the liquid phase at surface pressure and temperature.

(4) *Continuous accumulations.* Continuous accumulations are resources that are pervasive throughout large areas, have ill-defined boundaries, and typically lack or are unaffected by hydrocarbon-water contacts near the base of the accumulation. Examples include, but are not limited to, natural bitumen (oil sands), gas hydrates, and self-sourced accumulations such as coalbed methane, shale gas, and oil shale deposits. Typically, such accumulations require specialized extraction technology (*e.g.*, removal of water from coalbed methane accumulations, large fracturing programs for shale gas, steam, or solvents to mobilize bitumen for in-situ recovery, and, in some cases, mining methods). Moreover, the extracted oil or gas may require significant processing prior to sale (*e.g.*, bitumen upgraders).

(5) *Conventional accumulations.* Conventional accumulations are discrete oil or gas resources related to

localized geological structural features or stratigraphic conditions, with the accumulation typically bounded by a hydrocarbon-water contact near its base, and which are significantly affected by the tendency of lighter hydrocarbons to ''float'' or accumulate above heavier water.

(6) *Deterministic estimate.* The method of estimating reserves or resources is called deterministic when a single value for each parameter (from the geoscience, engineering, or economic data) in the reserves calculation is used in the reserves estimation procedure.

* * * * *

(8) *Development project.* A development project is the means by which petroleum resources are brought to the status of economically producible. As examples, the development of a single reservoir or field, an incremental development in a producing field, or the integrated development of a group of several fields and associated facilities with a common ownership may constitute a development project.

* * * * *

(10) *Economically producible.* The term economically producible, as it relates to a resource means a resource which generates revenue that exceeds, or is reasonably expected to exceed, the costs of the operation. The value of the products that generate revenue shall be determined at the terminal point of oil and gas producing activities as defined in paragraph (a)(16) of this section.

(11) *Estimated ultimate recovery (EUR).* Estimated ultimate recovery is the sum of reserves remaining as of a given date and cumulative production as of that date.

* * * * *

(13) *Exploratory well.* A well drilled to find and produce oil or gas in an unproved area or to find a new reservoir in a field previously found to be productive of oil or gas in another reservoir. Generally, an exploratory well is any well that is not a development well, an extension well, a service well, or a stratigraphic test well as those items are defined in this section.

(14) *Extension well.* A well drilled to extend the limits of a proved reservoir.

* * * * *

(16) *Oil and gas producing activities.* (i) Oil and gas producing activities include:

(A) The search for crude oil, including condensate and natural gas liquids, or natural gas (''oil and gas'') in their natural states and original locations;

(B) The acquisition of property rights or properties for the purpose of further exploration or for the purpose of removing the oil or gas from existing reservoirs on such properties;

(C) The construction, drilling, and production activities necessary to retrieve oil and gas from their natural reservoirs, including the acquisition, construction, installation, and maintenance of field gathering and storage systems, such as:

(*1*) Lifting the oil and gas to the surface; and

(*2*) Gathering, treating, and field processing (as in the case of processing gas to extract liquid hydrocarbons); and

(D) Extraction of marketable hydrocarbons, in the solid, liquid, or gaseous state, from oil sands, shale, coalbeds, or other nonrenewable natural resources which can be upgraded into natural or synthetic oil or gas, and activities undertaken with a view to such extraction.

Instruction 1 to paragraph (a)(16)(i): The oil and gas production function shall be regarded as terminating at the first point at which:

a. Oil, gas, or gas liquids are delivered to a main pipeline, a common carrier, a refinery, or a marine terminal; and

b. In the case of marketable hydrocarbons that can be upgraded into natural or synthetic oil or gas, the marketable hydrocarbons are delivered to a main pipeline, a common carrier, a refinery, a marine terminal, or a facility which upgrades such natural resources into synthetic oil or gas from the natural resources.

Instruction 2 to paragraph (a)(16)(i): For purposes of this paragraph (a)(16), the term ''marketable hydrocarbons'' means hydrocarbons for which there is a market for the product in the state in which the hydrocarbons are delivered.

(ii) Oil and gas producing activities do not include:

(A) Transporting, refining, processing (other than field processing of gas to extract liquid hydrocarbons), or marketing oil and gas;

(B) Activities relating to the production of natural resources other than oil, gas, or natural resources from which natural or synthetic oil and gas can be extracted; or

(C) Production of geothermal steam.

(17) *Possible reserves.* Possible reserves are those additional reserves that are less certain to be recovered than probable reserves.

(i) When deterministic methods are used, the total quantities ultimately recovered from a project have a low probability of exceeding proved plus probable plus possible reserves. When probabilistic methods are used, there should be at least a 10% probability that the total quantities ultimately recovered will equal or exceed the proved plus probable plus possible reserves estimates.

(ii) Possible reserves may be assigned to areas of a reservoir adjacent to probable reserves where data control and interpretations of available data are progressively less certain. Frequently, this will be in areas where geoscience and engineering data are unable to define clearly the area and vertical limits of commercial production from the reservoir by a defined project.

(iii) Possible reserves also include incremental quantities associated with a greater percentage recovery of the hydrocarbons in place than the recovery quantities assumed for probable reserves.

(iv) The proved plus probable and proved plus probable plus possible reserves estimates must be based on reasonable alternative technical and commercial interpretations within the reservoir or subject project that are clearly documented, including comparisons to results in successful similar projects.

(v) Possible reserves may be assigned where geoscience and engineering data identify directly adjacent portions of a reservoir within the same accumulation that may be separated from proved areas by faults with displacement less than formation thickness or other geological discontinuities and that have not been penetrated by a wellbore, but are interpreted to be in communication with the known (proved) reservoir. Probable or possible reserves may be assigned to areas that are structurally higher or lower than the proved area if these areas are in communication with the proved reservoir.

(vi) Pursuant to paragraph (a)(24)(iii) of this section, where direct observation has defined a highest known oil (HKO) elevation and the potential exists for an associated gas cap, proved oil reserves should be assigned in the structurally higher portions of the reservoir above the HKO only if the higher contact can be established with reasonable certainty through reliable technology. Portions of the reservoir that do not meet this reasonable certainty criterion may be assigned as probable and possible oil and/or gas based on reservoir fluid properties and pressure gradient interpretations.

(18) *Probable reserves.* Probable reserves are those additional reserves that are less certain to be recovered than proved reserves but which, together with proved reserves, are as likely as not to be recovered.

(i) When deterministic methods are used, it is as likely as not that actual remaining quantities recovered will

exceed the sum of estimated proved plus probable reserves. When probabilistic methods are used, there should be at least a 50% probability that the actual quantities recovered will equal or exceed the proved plus probable reserves estimates.

(ii) Probable reserves may be assigned to areas of a reservoir adjacent to proved reserves where data control or interpretations of available data are less certain, even if the interpreted reservoir continuity of structure or productivity does not meet the reasonable certainty criterion.

(iii) Probable reserves estimates also include potential incremental quantities associated with a greater percentage recovery of the hydrocarbons in place than assumed for proved reserves.

(iv) See also guidelines in paragraphs (a)(17)(iv) through (a)(17)(vi) of this section.

(19) *Probabilistic estimate.* The method of estimation of reserves or resources is called probabilistic when the full range of values that could reasonably occur for each unknown parameter (from the geoscience, engineering, and economic data) is used to generate a full range of possible outcomes and their associated probabilities of occurrence.

* * * * *

(22) *Proved developed oil and gas reserves.* Proved developed oil and gas reserves are proved reserves that can be expected to be recovered:

(i) In projects that extract oil and gas through wells, through existing wells with existing equipment and operating methods; and

(ii) In projects that extract oil and gas in other ways, through installed extraction technology operational at the time of the reserves estimate.

* * * * *

(24) *Proved oil and gas reserves.* Proved oil and gas reserves are those quantities of oil and gas, which, by analysis of geoscience and engineering data, can be estimated with reasonable certainty to be economically producible—from a given date forward, from known reservoirs, and under existing economic conditions, operating methods, and government regulations—prior to the time at which contracts providing the right to operate expire, unless evidence indicates that renewal is reasonably certain, regardless of whether deterministic or probabilistic methods are used for the estimation. The project to extract the hydrocarbons must have commenced or the operator must be reasonably certain that it will commence the project within a reasonable time.

(i) The area of the reservoir considered as proved includes:

(A) The area identified by drilling and limited by fluid contacts, if any, and

(B) Adjacent undrilled portions of the reservoir that can, with reasonable certainty, be judged to be continuous with it and to contain economically producible oil or gas on the basis of available geoscience and engineering data.

(ii) In the absence of data on fluid contacts, proved quantities in a reservoir are limited by the lowest known hydrocarbons (LKH) as seen in a well penetration unless geoscience, engineering, or performance data and reliable technology establishes a lower contact with reasonable certainty.

(iii) Where direct observation from well penetrations has defined a highest known oil (HKO) elevation and the potential exists for an associated gas cap, proved oil reserves may be assigned in the structurally higher portions of the reservoir only if geoscience, engineering, or performance data and reliable technology establishes the higher contact with reasonable certainty.

(iv) Reserves which can be produced economically through application of improved recovery techniques (including, but not limited to, fluid injection) are included in the proved classification when:

(A) Successful testing by a pilot project in an area of the reservoir with properties no more favorable than in the reservoir as a whole, the operation of an installed program in the reservoir or an analogous formation in the immediate area, or other evidence using reliable technology establishes the reasonable certainty of the engineering analysis on which the project or program was based; and

(B) The project has been approved for development by all necessary parties and entities, including governmental entities.

(v) Existing economic conditions include prices and costs at which economic producibility from a reservoir is to be determined. The price shall be the average price during the 12-month period prior to the ending date of the period covered by the report, determined as an unweighted arithmetic average of the ending price for each month within such period.

(25) *Proved undeveloped reserves.* Proved undeveloped oil and gas reserves are reserves that are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion.

(i) Reserves on undrilled acreage shall be limited to those drilling units directly offsetting productive units that are reasonably certain of production when drilled, unless evidence using reliable technology exists that establishes reasonable certainty of economic producibility at greater distances.

(A) In a conventional accumulation, offsetting productive units must lie within an area in which economic producibility has been established by reliable technology to be reasonably certain.

(B) Proved reserves can be claimed in a conventional or continuous accumulation in a given area in which engineering, geoscience, and economic data, including actual drilling statistics in the area, and reliable technology show that, with reasonable certainty, economic producibility exists beyond immediately offsetting drilling units.

(ii) Undrilled locations can be classified as having proved undeveloped reserves only if a development plan has been adopted indicating that they are scheduled to be drilled within five years, unless unusual circumstances justify a longer time.

(iii) Under no circumstances shall estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual projects in the area and in the same reservoir or an analogous reservoir in the same geologic formation in the immediate area or by other evidence using reliable technology establishing reasonable certainty.

(26) *Reasonable certainty.* Reasonable certainty means ''much more likely to be achieved than not.'' When deterministic methods are used, as changes due to increased availability of geoscience (geological, geophysical, and geochemical), engineering, and economic data are made to estimated ultimate recovery (EUR) with time, reasonably certain EUR is much more likely to increase than to either decrease or remain constant. When probabilistic methods are used, reasonable certainty means that there is at least a 90% probability that the quantities actually recovered will equal or exceed the stated volume.

(27) *Reliable technology.* Reliable technology is technology (including computational methods) that, when applied using high quality geoscience and engineering data, is widely accepted within the oil and gas industry, has been field tested and has demonstrated consistency and

repeatability in the formation being evaluated or in an analogous formation. Expressed in probabilistic terms, reliable technology has been proved empirically to lead to correct conclusions in 90% or more of its applications.

(28) *Reserves.* Reserves are estimated remaining quantities of oil and gas and related substances anticipated to be recoverable, as of a given date, by application of development projects to known accumulations based on: Analysis of geoscience and engineering data; the use of technology appropriate to establish the degree of certainty of the reserves; the legal right to produce; installed means of delivering the oil, gas, or related substances to markets, or the permits, financing, and the appropriate level of certainty (reasonable certainty, as likely as not, or possible but not likely) to do so; and economic producibility at current prices and costs. The volumes of reserves shall be determined on the basis of their volumes at the terminal point of oil and gas producing activities as defined in paragraph (a)(16) of this section. Reserves are classified as proved, probable, and possible according to the degree of uncertainty associated with the estimates.

Note to paragraph (a)(28): Reserves should not be assigned to adjacent reservoirs isolated by major, potentially sealing, faults until those reservoirs are penetrated and evaluated as economically producible. Reserves should not be assigned to areas that are clearly separated from a known accumulation by a non-productive reservoir (*i.e.*, absence of reservoir, structurally low reservoir, or negative test results). Such areas may contain prospective resources (*i.e.*, potentially recoverable resources from undiscovered accumulations).

* * * * *

(30) *Resources.* Resources are quantities of oil and gas estimated to exist in naturally occurring accumulations. A portion of the resources may be estimated to be recoverable, and another portion may be considered to be unrecoverable. Resources include both discovered and undiscovered accumulations.

(31) *Sedimentary basin.* A sedimentary basin is a low area in the crust of the earth in which sediments have accumulated. Frequently, sedimentary basins that contain oil and gas reserves contain a number of discrete oil and gas reservoirs.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Amend § 229.102 by revising the introductory text of Instruction 3, and Instructions 4, 5 and 8 to read as follows.

§ 229.102 (Item 102) Description of property.

* * * * *

Instructions to Item 102: * * *

3. In the case of an extractive enterprise, not involved in oil and gas producing activities, material information shall be given as to production, reserves, locations, development, and the nature of the registrant's interest. If individual properties are of major significance to an industry segment:

* * * * *

4. A registrant engaged in oil and gas producing activities shall provide the information required by Subpart 1200 of Regulation S–K.

5. In the case of extractive reserves other than oil and gas reserves, estimates other than proven or probable reserves (and any estimated values of such reserves) shall not be disclosed in any document publicly filed with the Commission, unless such information is required to be disclosed in the document by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with the registrant, or otherwise to acquire the registrant's securities, such estimates may be included in documents relating to such acquisition.

* * * * *

8. The attention of certain issuers engaged in oil and gas producing activities is directed to the information called for in Guide 4 (referred to in § 229.801(d)).

* * * * *

§ 229.801 [Amended]

5. Amend § 229.801 by removing and reserving paragraph (b) and removing the authority citation following the section.

§ 229.802 [Amended]

6. Amend § 229.802 by removing and reserving paragraph (b) and removing the authority citation following the section.

7. Add subpart 229.1200 to read as follows:

Subpart 229.1200—Disclosure by Registrants Engaged in Oil and Gas Producing Activities

Sec.

Subpart 229.1200—Disclosure by Registrants Engaged in Oil and Gas Producing Activities

§ 229.1201 (Item 1201) General instructions to oil and gas industry-specific disclosures.

(a) If oil and gas producing activities are material to the registrant's or its subsidiaries' business operations or financial position, the disclosure specified in this subpart 229.1200 should be included under appropriate captions (with cross references, where applicable, to related information disclosed in financial statements). However, limited partnerships and joint ventures that conduct, operate, manage, or report upon oil and gas drilling or income programs, that acquire properties either for drilling and production, or for production of oil, gas, or geothermal steam or water, need not include such disclosure.

(b) To the extent that Items 1202 through 1208 (§§ 229.1202 through 229.1208) call for disclosures in tabular format, as specified in the particular Item, a registrant may modify such format for ease of presentation, to add information or to combine two or more required tables.

(c) The definitions in Rule 4–10(a) of Regulation S–X (17 CFR 210.4–10(a)) shall apply for purposes of this subpart 229.1200.

(d) For purposes of this subpart 229.1200, the term ''by geographic area'' means, to the extent allowed by law:

(1) By continent;

(2) By country totals for each country that contains 15% or more of the registrant's global oil reserves or gas reserves; and

(3) By sedimentary basin or field totals for each sedimentary basin or field that contains 10% or more of the registrant's global oil reserves or gas reserves.

§ 229.1202 (Item 1202) Disclosure of reserves.

(a) *Summary of conventional oil and gas reserves at fiscal year end.* (1) Provide the information specified in paragraph (a)(2) of this Item in tabular format as provided below:

SUMMARY OF OIL AND GAS RESERVES IN CONVENTIONAL ACCUMULATIONS AS OF FISCAL-YEAR END BASED ON AVERAGE FISCAL-YEAR PRICES

Reserves category	Reserves	
	Oil (mbbls)	Natural gas (mmcf)
PROVED		
Developed:		
Continent A		
Continent B		
15% Country A		
15% Country B		
10% Field A in Country B		
Other Fields in Country B		
Other Countries in Continent B		
Undeveloped:		
Continent A		
Continent B		
15% Country A		
15% Country B		
10% Field A in Country B		
Other Fields in Country B		
Other Countries in Continent B		
TOTAL PROVED		
PROBABLE		
POSSIBLE		

(2) Disclose, in the aggregate and by geographic area, reserves from conventional accumulations estimated using prices and costs under existing economic conditions, for each product type, in the following categories:

(i) Proved developed reserves;

(ii) Proved undeveloped reserves;

(iii) Total proved reserves;

(iv) Probable reserves (optional); and

(v) Possible reserves (optional).

Instruction 1 to paragraph (a)(2): Disclose updated reserves tables as of the close of each fiscal year.

Instruction 2 to paragraph (a)(2): The registrant is permitted, but not required, to disclose probable or possible reserves pursuant to paragraphs (a)(2)(iv) and (a)(2)(v) of this Item.

Instruction 3 to paragraph (a)(2): If the registrant discloses amounts of a product in barrels of oil equivalent, disclose the basis for such equivalency.

(3) Reported total reserves shall be simple arithmetic sums of all estimates for individual properties or fields within each reserves category. When probabilistic methods are used, reserves should not be aggregated probabilistically beyond the field or property level; instead, they should also be aggregated by simple arithmetic summation.

(4) If the registrant has not previously disclosed reserves estimates in a filing with the Commission, the registrant shall disclose the technologies used to establish the appropriate level of certainty for reserves estimates from material properties included in the total reserves disclosed. The particular properties do not need to be identified.

(5) If the registrant chooses to disclose probable or possible reserves, discuss the relative risks related to such reserves estimates.

(6) *Preparation of reserves estimates or reserves audit.* Disclose the following information regarding the technical person primarily responsible for preparing the reserves estimates and, if the registrant represents that a third party conducted a reserves audit, regarding the technical person primarily responsible for conducting such reserves audit:

(i) If the person is an employee of the registrant:

(A) The fact that an employee of the registrant had primary responsibility for preparing the reserves estimate (but the employee does not have to be identified); and

(B) Measures taken to assure the independence and objectivity of the estimate;

(ii) If the person is not an employee of the registrant:

(A) The identity of the person;

(B) The nature and amount of all work that the person has performed for the registrant during the past three fiscal years, other than preparing the reserves estimate or conducting the reserves audit, as well as all compensation and fees (in any form) paid to that person for all such services;

(C) Whether the person has any other interests in the company or other conflict of interests;

(iii) Whether the person:

(A) Has a minimum of three years of practical experience in petroleum engineering or petroleum production geology, with at least one full year of this experience being in the estimation and evaluation of reserves if the person

was primarily responsible for preparing the reserves estimates;

(B) Has a minimum of ten years of practical experience in petroleum engineering or petroleum production geology, with at least five years of this experience being in the estimation and evaluation of reserves and the conducting of reserves audits if that person conducted a reserves audit of the registrant's reserves estimates;

(C) Has received, and is maintaining in good standing, a registered or certified professional engineer's license or a registered or certified professional geologist's license, or the equivalent thereof, from an appropriate governmental authority or a recognized self-regulating professional organization; and

(D) Has a bachelor's or advanced degree in petroleum engineering, geology, or other discipline of engineering or physical science, and if so, the specific degree earned by that person; and

(iv) Any memberships, in good standing, of the person with a self-regulatory organization of engineers, geologists, other geoscientists, or other professionals whose professional practice includes reserves evaluations or reserves audits, that:

(A) Admits members primarily on the basis of their educational qualifications;

(B) Requires its members to comply with the professional standards of competence and ethics prescribed by the organization that are relevant to the estimation, evaluation, review, or audit of reserves data; and

(C) Has disciplinary powers, including the power to suspend or expel a member; and

(v) To the extent the person does not have all of the qualifications listed in paragraphs (a)(6)(iii) and (iv) of this Item, the reasons why the registrant believes that the person is sufficiently qualified to be primarily responsible for the technical aspects of the reserves estimation or audit, as applicable, and any risks associated with reserves estimates not prepared or audited by persons with such qualifications.

Instruction to paragraph (a)(6): For purposes of this Item, the identified ''person'' may be an individual or a business entity. To the extent that the person is a business entity, any disclosure regarding the qualifications listed in paragraphs (a)(6)(iii) and (iv) of this Item of that person will relate to the individual that is primarily responsible for the technical aspects of the reserves estimation or audit, as applicable.

(7) *Third party preparer reports.* If the registrant represents that its reserves estimates, or any estimated valuation thereof, are based on estimates prepared by a third party, the registrant shall file a report of the third party as an exhibit to the relevant registration statement or report. The report must include the following disclosure:

(i) The purpose for which the report was prepared and for whom it was prepared;

(ii) The effective date of the report and the date on which the report was completed;

(iii) The proportion of the company's total reserves covered by the report and the geographic area in which the covered reserves are located;

(iv) The assumptions, data, methods, and procedures used to estimate reserves quantities, including the percentage of the registrant's total reserves reviewed in connection with the preparation of the report, and a statement that such assumptions, data, methods, and procedures are appropriate for the purpose served by the report;

(v) A discussion of primary economic assumptions;

(vi) A discussion of the possible effects of regulation on the ability of the registrant to recover the estimated reserves;

(vii) A discussion regarding the inherent risks and uncertainties of reserves estimates;

(viii) A statement that the third party has used all methods and procedures as it considered necessary under the circumstances to prepare the report; and

(ix) The signature of the third party.

(8) *Third party reserves audit reports.* If the registrant represents that a third party conducted a reserves audit of the registrant's reserves estimates, or any estimated valuation thereof, the registrant shall file a report of the third party as an exhibit to the relevant registration statement or report. The report must include the following disclosure:

(i) The purpose for which the report is being prepared and for whom it is prepared;

(ii) The effective date of the report and the date on which the report was completed;

(iii) The proportion of the company's total reserves covered by the report and the geographic area in which the covered reserves are located;

(iv) The assumptions, data, methods, and procedures used to conduct the reserves audit, including the percentage of the registrant's total reserves reviewed in connection with the preparation of the report, and a statement that such assumptions, data, methods, and procedures are appropriate for the purpose served by the report;

(v) A discussion of primary economic assumptions;

(vi) A discussion of the possible effects of regulation on the ability of the registrant to recover the estimated reserves;

(vii) A discussion regarding the inherent risks and uncertainties of reserves estimates;

(viii) A statement that the third party has used all methods and procedures as it considered necessary under the circumstances to prepare the report;

(ix) A brief summary of the third party's conclusions with respect to the reserves estimates; and

(x) The signature of the third party.

(9) For purposes of this Item 1202, the term ''reserves audit'' means the process of reviewing certain of the pertinent facts interpreted and assumptions made that have resulted in an estimate of reserves prepared by others and the rendering of an opinion about the appropriateness of the methodologies employed, the adequacy and quality of the data relied upon, the depth and thoroughness of the reserves estimation process, the classification of reserves appropriate to the relevant definitions used, and the reasonableness of the estimated reserves quantities. In order to disclose that a ''reserves audit'' has been conducted, the report resulting from this review must represent an examination of at least 80% of the portion of the registrant's reserves covered by the reserves audit.

(b) *Summary of oil and gas reserves from continuous accumulations.* (1) Provide the information specified in paragraph (b)(2) of this Item in tabular format as provided below:

SUMMARY OF OIL AND GAS RESERVES FROM CONTINUOUS ACCUMULATIONS AS OF FISCAL-YEAR END BASED ON AVERAGE FISCAL-YEAR PRICES

Reserves category	Reserves		
	Product A (measure)	Product B (measure)	Product C (measure)
PROVED			
Developed:			
Country A			
Country B			
10% Field A in Country B			
Other Fields in Country B			
Undeveloped:			
Country A			
Country B			
10% Field A in Country B			
Other Fields in Country B			
TOTAL PROVED			
PROBABLE			
POSSIBLE			

(2) Disclose, in the aggregate and by geographic area, reserves from continuous accumulations (including, but not limited to, bitumen and shale oil, shale gas, and coalbed methane) estimated using prices and costs under existing economic conditions, for each product type applicable to the registrant, in the following categories:

(i) Proved developed reserves;

(ii) Proved undeveloped reserves;

(iii) Total proved reserves;

(iv) Probable reserves (optional); and

(v) Possible reserves (optional).

Instruction 1 to paragraph (b)(2): Disclose updated reserves tables as of the close of each fiscal year.

Instruction 2 to paragraph (b)(2): The registrant is permitted, but not required, to disclose probable or possible reserves pursuant to paragraphs (b)(2)(iv) and (b)(2)(v) of this Item.

Instruction 3 to paragraph (b)(2): If the registrant discloses amounts of a product in barrels of oil equivalent, disclose the basis for such equivalency.

(3) Provide the disclosures required by paragraphs (a)(3) through (a)(9) of this Item, as they apply to continuous accumulations.

(c) *Reserves sensitivity analysis (optional).* (1) The registrant may, but is not required, to provide the information specified in paragraph (c)(2) of this Item in tabular format as provided below:

SENSITIVITY OF RESERVES TO PRICES BY PRINCIPAL PRODUCT TYPE AND PRICE SCENARIO

Price case	Proved reserves			Probable reserves			Possible reserves		
	Oil (mbbls)	Gas (mmcf)	Product A (measure)	Oil (mbbls)	Gas (mmcf)	Product A (measure)	Oil (mbbls)	Gas (mmcf)	Product A (measure)
Scenario 1									
Scenario 2									

(2) The registrant may, but is not required to, disclose, in the aggregate, an estimate of reserves estimated for each product type based on different price and cost criteria, such as a range of prices and costs that may reasonably be achieved, including standardized futures prices or management's own forecasts.

(3) If the registrant provides disclosure under this paragraph (c) of this Item, disclose the price and cost schedules and assumptions on which the values disclosed under paragraphs (c)(2)(i) through (c)(2)(iv) of this Item are based.

Instruction to Item 1202: Estimates of oil or gas resources other than reserves, and any estimated values of such resources, shall not be disclosed in any document publicly filed with the Commission, unless such information is required to be disclosed in the document by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with the registrant or otherwise to acquire the registrant's securities, such estimate may be included in documents related to such acquisition.

§ 229.1203 (Item 1203) Proved undeveloped reserves.

(a) Provide the information specified in paragraph (b) of this Item in tabular format as provided below:

CONVERSION OF PROVED UNDEVELOPED RESERVES

Fiscal year	Proved undeveloped reserves converted to proved developed reserves			Investment in conversion of proved undeveloped reserves to proved developed reserves, $
	Oil (mbbls)	Gas (mmcf)	Product A (measure)	
Fiscal Year—4				

CONVERSION OF PROVED UNDEVELOPED RESERVES—Continued

Fiscal year	Proved undeveloped reserves converted to proved developed reserves			Investment in conversion of proved undeveloped reserves to proved developed reserves, $
	Oil (mbbls)	Gas (mmcf)	Product A (measure)	
Fiscal Year—3				
Fiscal Year—2				
Fiscal Year—1				
Fiscal Year				

(b) For the last five fiscal years, disclose, by product type, proved reserves estimated using current prices and costs in the following categories:

(1) Proved undeveloped reserves converted to proved developed reserves during the year; and

(2) Investments in the conversion of proved undeveloped reserves to proved developed reserves during the year.

(c) Disclose, by product type, any proved undeveloped reserves which have remained undeveloped for five years or more. Explain the reason for the lack of development.

(d) Disclose the registrant's plans to develop proved undeveloped reserves and to further develop proved oil and gas reserves.

(e) Discuss any material changes to proved undeveloped reserves.

§ 229.1204 (Item 1204) Oil and gas production.

(a) Provide the information specified in paragraph (b) of this Item in tabular format as provided below:

OIL AND GAS PRODUCTION, SALES PRICES, AND PRODUCTION COSTS

Location	Oil			Gas			Product A		
	Production (mbbls)	Sales price ($US/bbl)	Production cost ($US/boe)	Production (mmcf)	Sales price ($US/mcf)	Production cost ($US/mcfc)	Production (measure)	Sales price ($US/measure)	Production cost ($US/measure)
Geographic Area A									
Fiscal Year—2									
Fiscal Year—1									
Fiscal Year									
Geographic Area B									
Geographic Area C									

(b) Disclose, by geographic area, for the last three years:

(1) Net oil and gas production;

(2) Average oil and gas sales prices, net of any effects as a result of hedging transactions; and

(3) Average production costs (lifting costs, not including severance taxes) per unit of production.

(c) For purposes of this Item 1204, the term ''net production'' includes only production that the registrant owns and production attributable to the registrant's interest in projects less royalties and production due to others. In special situations (*e.g.*, foreign operations), the registrant may provide net production before royalties if more appropriate. If the registrant provides ''net before royalty'' production figures, it must note the change from usage of ''net production.''

§ 229.1205 (Item 1205) Drilling and other exploratory and development activities.

(a) Provide the information specified in paragraph (b) of this Item in tabular format as provided below:

DRILLING ACTIVITIES

[Geographic area]

	Exploratory wells		Development wells		Extension wells	
	Gross	Net	Gross	Net	Gross	Net
Oil						
Fiscal Year						
Fiscal Year—1						
Fiscal Year—2						
Natural Gas						
Fiscal Year						
Fiscal Year—1						
Fiscal Year—2						
Product A						
Fiscal Year						
Fiscal Year—1						
Fiscal Year—2						
Suspended						
Fiscal Year						

DRILLING ACTIVITIES—Continued

[Geographic area]

	Exploratory wells		Development wells		Extension wells	
	Gross	Net	Gross	Net	Gross	Net
Fiscal Year—1						
Fiscal Year—2						
Dry						
Fiscal Year						
Fiscal Year—1						
Fiscal Year—2						
Total						

(b) Disclose, by geographic area, for each of the last three years, the following information:

(1) The number of gross and net productive, suspended, and dry exploratory wells drilled;

(2) The number of gross and net productive, suspended, and dry development wells drilled; and

(3) The number of gross and net productive, suspended, and dry extension wells drilled.

(c) *Definitions.* For purposes of this Item, the following terms shall be defined as indicated below.

(1) A *dry well* is an exploratory, development, or extension well that proves to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

(2) A *productive well* is an exploratory, development, or extension well that is not a dry well.

(3) A *suspended well* is a well that has neither been declared dry nor completed for use in field operations.

(4) *Completion* refers to installation of permanent equipment for production of oil or gas, or, in the case of a dry well, to reporting to the appropriate authority that the well has been abandoned.

(v) The *number of wells drilled* refers to the number of wells completed at any time during the fiscal year, regardless of when drilling was initiated.

(d) Disclose, by geographic area, for each of the last three years, any other exploratory or development activities conducted, including implementation of mining methods for purposes of oil and gas producing activities.

§ 229.1206 (Item 1206) Present activities.

(a) Disclose, by geographical area, the registrant's present activities, such as the number of wells in the process of being drilled (including wells temporarily suspended), waterfloods in process of being installed, pressure maintenance operations, and any other related activities of material importance.

(b) Provide the description of present activities as of a date at the end of the most recent fiscal year or as close to the date that the registrant files the document as reasonably possible.

(c) Include only those wells in the process of being drilled at the ''as of'' date and express them in terms of both gross and net wells.

(d) Do not include wells that the registrant plans to drill, but has not commenced drilling unless there are factors that make such information material.

§ 229.1207 (Item 1207) Delivery commitments.

(a) If the registrant is committed to provide a fixed and determinable quantity of oil or gas in the near future under existing contracts or agreements, disclose material information concerning the estimated availability of oil and gas from any principal sources, including the following:

(1) The principal sources of oil and gas that the registrant will rely upon and the total amounts that the registrant expects to receive from each principal source and from all sources combined;

(2) The total quantities of oil and gas that are subject to delivery commitments; and

(3) The steps that the registrant has taken to ensure that available reserves and supplies are sufficient to meet such commitments for the next one to three years.

(b) Disclose the information required by this Item:

(1) In a form understandable to investors; and

(2) Based upon the facts and circumstances of the particular situation, including, but not limited to:

(i) Disclosure by geographic area;

(ii) Significant supplies dedicated or contracted to the registrant;

(iii) Any significant reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and interruptible contracts;

(iv) Any priority allocations or price limitations imposed by Federal or State regulatory agencies, as well as other factors beyond the registrant's control that may affect the registrant's ability to meet its contractual obligations (the registrant need not provide detailed discussions of price regulation);

(v) Any other factors beyond the registrant's control, such as other parties having control over drilling new wells, competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies, which may affect the registrant's ability to acquire additional reserves and supplies or to maintain or increase the availability of reserves and supplies; and

(vi) Any impact on the registrant's earnings and financing needs resulting from its inability to meet short-term or long-term contractual obligations. (See Items 303 and 1209 of Regulation S–K (§§ 229.303 and 229.1209).)

(c) If the registrant has been unable to meet any significant delivery commitments in the last three years, describe the circumstances concerning such events and their impact on the registrant.

(d) For purposes of this Item, *available reserves* are estimates of the amounts of oil and gas which the registrant can produce from current proved developed reserves using presently installed equipment under existing economic and operating conditions and an estimate of amounts that others can deliver to the registrant under long-term contracts or agreements on a per-day, per-month, or per-year basis.

§ 229.1208 (Item 1208) Oil and gas properties, wells, operations, and acreage.

(a) Identify and describe generally the registrant's material properties, plants, facilities, and installations:

(1) Identify the geographic area in which they are located;

(2) Indicate whether they are located onshore or offshore; and

(3) Describe any statutory or other mandatory relinquishments, surrenders, back-ins, or changes in ownership.

(b) Provide the information specified in paragraph (c) of this Item in tabular format as provided below:

WELLS

Location	Producing wells	
	Gross	Net
Geographic Area A:		
Oil Wells		

WELLS—Continued

Location	Producing wells	
	Gross	Net
Natural Gas Wells		
Product A Wells		
Total		
Geographic Area B:		
Oil Wells		
Natural Gas Wells		
Product A Wells		
Total		

(c) For oil wells and gas wells in both conventional and continuous accumulations and for other wells for products from continuous accumulations, disclose separately the number of the registrant's producing wells, expressed in terms of both gross wells and net wells, by geographic area.

(d) To the extent the registrant is extracting hydrocarbons through means other than wells, provide a discussion of such operations.

(e) Provide the information specified in paragraph (f) of this Item in tabular format as provided below:

ACREAGE

	Developed acres		Undeveloped acres	
	Gross	Net	Gross	Net
Geographic Area A				
Geographic Area B				
Geographic Area C				
Total				

(f) Disclose, by geographic area, the registrant's total gross and net developed acres (*i.e.*, acres spaced or assignable to productive wells) and undeveloped acres, including leases and concessions.

(g) For unproved properties disclose:

(1) The existence, nature (including any bonding requirements), timing, and cost (specified or estimated) of any work commitments; and

(2) By geographic area, the net area of unproved property for which the registrant expects its rights to explore, develop, and exploit to expire within one year.

(h) Disclose areas of acreage concentration, and, if material, the minimum remaining terms of leases and concessions.

(i) *Definitions.* For purposes of this Item, the following terms shall be defined as indicated:

(1) A *gross well or acre* is a well or acre in which the registrant owns a working interest. The number of gross wells is the total number of wells in which the registrant owns a working interest. Count one or more completions in the same bore hole as one well. In a footnote, disclose the number of wells with multiple completions. If one of the multiple completions in a well is an oil completion, classify the well as an oil well.

(2) A *net well or acre* is deemed to exist when the sum of fractional ownership working interests in gross wells or acres equals one. The number of net wells or acres is the sum of the fractional working interests owned in gross wells or acres expressed as whole numbers and fractions of whole numbers.

(3) *Productive wells* include producing wells and wells mechanically capable of production.

(4) *Undeveloped acreage* encompasses those leased acres on which wells have not been drilled or completed to a point that would permit the production of economic quantities of oil or gas regardless of whether such acreage contains proved reserves. Do not confuse undeveloped acreage with undrilled acreage held by production under the terms of the lease.

§ 229.1209 (Item 1209) Discussion and analysis of changes, trends, and uncertainties for registrants engaged in oil and gas activities.

(a) Provide, either as part of Management's Discussion and Analysis of Financial Condition and Results of Operations or in a separate section, a discussion of:

(1) Material changes in proved reserves and, if disclosed, probable and possible reserves, and the sources to which such changes are attributable, including changes made due to:

(i) Changes in prices;

(ii) Technical revisions; and

(iii) Changes in the status of any concessions held (such as terminations, renewals, or changes in provisions);

(2) Technologies used to establish the appropriate level of certainty for any material additions to, or increases in, reserves estimates; and

(3) Known trends, demands, commitments, uncertainties, and events that have had, or are reasonably likely to have, a material effect on the company with respect to matters including, but not limited to, the following:

(i) Prices and costs;

(ii) Performance of currently producing wells, including water production from such wells and the need to use enhanced recovery techniques to maintain production from such wells;

(iii) Performance of any mining-type activities for the production of hydrocarbons;

(iv) The registrant's recent ability to convert:

(A) Proved undeveloped reserves to proved developed reserves;

(B) Probable reserves to proved reserves, if disclosed; and

(C) Possible reserves to probable or proved reserves, if disclosed;

(v) Anticipated capital expenditures directed toward conversion of:

(A) Proved undeveloped reserves to proved developed reserves;

(B) Probable reserves to proved reserves, if disclosed; and

(C) Possible reserves to probable or proved reserves, if disclosed;

(vi) Anticipated exploratory activities, well drilling, and production;

(vii) The minimum remaining terms of leases and concessions;

(viii) Material changes to any line item in the tables described in §§ 229.1202 through 229.1208; and

(ix) Potential effects of different forms of rights to resources, such as production sharing contracts, on operations.

(b) To the extent that such discussion or analysis of material changes, known trends, or uncertainties is directly relevant to a particular disclosure required by §§ 229.1202 through 229.1208, the registrant may include such discussion or analysis in response to the relevant section, with appropriate cross-references, rather than including such discussion or analysis in its general response to § 229.303 (Management's Discussion and Analysis of Financial Condition and Results of Operations).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.,* 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

9. Amend Form 20–F (referenced in § 249.220f) by:

a. Revising ''Instruction to Item 4'' and the introductory text and paragraph (b) of ''Instructions to Item 4.D''; and

b. Removing paragraph (c) of ''Instructions to Item 4.D'' and ''Appendix A to Item 4.D—Oil and Gas.''

The additions and revisions read as follows:

[**Note:** The text of Form 20–F does not, and this amendment thereto will not, appear in the Code of Federal Regulations.]

Form 20–F

* * * * *

Item 4. Information on the Company

* * * * *

Instructions to Item 4:

1. Furnish the information specified in any industry guide listed in Part 9 of Regulation S–K (§ 229.802 of this chapter) that applies to you.

2. If oil and gas operations are material to your or your subsidiaries' business operations or financial position, provide the information specified in Subpart 1200 of Regulation S–K (§ 229.1200 et seq. of this chapter). If the required information is not disclosed because a foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, the registrant shall disclose the country, cite the law or regulation which restricts such disclosure, and indicate that the reported reserves estimates or amounts do not include figures for the named country.

* * * * *

Instruction to Item 4.D: In the case of an extractive enterprise, other than an oil and gas producing activity:

* * * * *

(b) In documents that you file publicly with the Commission, do not disclose estimates of reserves unless the reserves are proved or probable and do not give estimated values of those reserves, unless foreign law requires you to disclose the information. If these types of estimates have already been provided to any person that is offering to acquire you, however, you may include the estimates in documents relating to the acquisition.

* * * * *

By the Commission.

Dated: June 26, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14944 Filed 7–8–08; 8:45 am]

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Regulations Under Section 2642(g); comments due by 7-16-08; published 4-17-08 [FR E8-08033]

VETERANS AFFAIRS DEPARTMENT

VA Veteran-Owned Small Business Verification Guidelines; comments due by 7-18-08; published 5-19-08 [FR E8-10489]

LIST OF PUBLIC LAWS

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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.

CORRECTION

In the **List of Public Laws** printed in the *Federal Register* on July 1, 2008, H.R. 2642, Public Law 110–252, was printed incorrectly. It should read as follows:

H.R. 2642/P.L. 110–252

Supplemental Appropriations Act, 2008 (June 30, 2008; 122 Stat. 2323)

Last List July 2, 2008

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