Federal Register

6–13–07 Wednesday
Vol. 72 No. 113 June 13, 2007

Pages 32517–32772

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## DEPARTMENT OF AGRICULTURE

### Agriculture Marketing Service

### 7 CFR Part 1215

**[Docket No. AMS-FV–07–0022; FV–06–706]**

## Popcorn Promotion, Research, and Consumer Information Order; Section 610 Review

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Confirmation of regulations.

**SUMMARY:** This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Popcorn Promotion, Research, and Consumer Information Program, under the criteria contained in Section 610 of the Regulatory Flexibility Act. Based upon its review, AMS has determined that the Popcorn Promotion, Research, and Consumer Information Order should be continued without change.

**ADDRESSES:** Interested persons may obtain a copy of the review at *www.regulations.gov* or requests for copies can be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–9915; Fax (202) 205–2800; or e-mail: *Deborah.Simmons@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sonia N. Jimenez, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0634-S, Washington, DC 20250–0244; telephone: (888) 720–9917; fax: (202) 205–2800; or e-mail:

**SUPPLEMENTARY INFORMATION:** The Popcorn Promotion, Research, and Consumer Information Act of 1996 (Act) (7 U.S.C. 7481 *et seq.*) authorized the Popcorn Promotion, Research, and Consumer Information Order (Order) which is industry operated and funded, with oversight by USDA. The Order's objective is to carry out an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen popcorns' competitive position, and to maintain and expand domestic and foreign markets for popcorn and popcorn products.

The Order (7 CFR Part 1215) became effective on September 1, 1997, and was implemented in January 1998 when assessments began. The Popcorn Board (Board) collects assessments from processors of over four million pounds of popcorn per year, regardless of the country of origin of the popcorn. The assessment rate is 6 cents per hundredweight.

Assessments under this program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, and international marketing and to enable it to exercise its duties in accordance with the Order.

The Order is administered by the Popcorn Board, which is composed of nine at-large processors who were appointed by the Secretary of Agriculture from nominations submitted by eligible processors. All processors of over four million pounds of popcorn annually are eligible to participate in the nomination process. All Board members serve terms of three years.

The Agricultural Marketing Service published in the **Federal Register** on March 24, 2006 (71 FR 14828) its plan to review certain regulations, including the Order, (conducted under the Popcorn Promotion, Research, and Consumer Information Act), under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warranted review.

AMS published a notice of review and request for written comments in the **Federal Register** on February 27, 2007 (72 FR 8633). The comment period ended on April 30, 2007. AMS received two comments. One commenter stated that it is a waste of tax dollars for USDA to oversee this program. In addition, the commenter stated that there is nothing about popcorn that needs to be researched and that private industry should conduct research if they so choose.

Expenses under the program are covered by assessments paid by the industry. The Popcorn Board is comprised of industry members that decide the projects the Board will conduct every year. All the activities of the Board, including USDA oversight costs, are paid by the popcorn industry from the assessments collected. Accordingly, no changes will be made based on this comment.

The second commenter was in favor of the program, noting that it increases awareness of popcorn.

The review was undertaken to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. In conducting this review, AMS considered the followings factors: (1) The continued need for the Order; (2) the nature of complaints or comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Currently, there are approximately 35 processors who are subject to the provisions of the Order. Processors of less than four million pounds of popcorn are exempt from assessment.

AMS provides Federal oversight of the Popcorn program. The Order is not unduly complex, and AMS has not identified any Federal rules, or State and local regulations that duplicate, overlap, or conflict with the Order. Over the years, regulation changes have been made to address industry operation changes and to improve program administration. The goal of these evaluations is to assure that the Order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

Based upon its review, AMS has determined that the Order should be continued without change. AMS plans to continue working with the popcorn industry in maintaining an effective program.

Dated: June 7, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–11376 Filed 6–12–07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–07–017]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Rappahannock River, Essex County, Westmoreland County, Layton, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the ''2007 Rappahannock River Boaters Association Spring and Fall Radar Shootout'', power boat races to be held on the waters of the Rappahannock River near Layton, VA. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Rappahannock River during the event.

**DATES:** This rule is effective from 11:30 a.m. to 4:30 p.m. on June 30, 2007.

**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 (CGD05–07–017) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Marine Events Coordinator, Fifth Coast Guard District, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 11, 2007, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Rappahannock River, Essex County, Westmoreland County, Layton, VA in the **Federal Register** (72 FR 18170). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

### Background and Purpose

On June 30, 2007 the Rappahannock River Boaters Association (RRBA) will sponsor the ''2007 RRBA Spring Radar Shootout'', on the waters of the Rappahannock River near Layton, Virginia. The event will consist of approximately 35 powerboats participating in high-speed competitive races, traveling along a 3-mile straight line race course. Participating boats will race individually within the designated course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

### Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Rappahannock River, near Layton, Virginia.

### Regulatory Evaluation

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

Although this regulation will prevent traffic from transiting a portion of the Rappahannock River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notification that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule would not have a significant economic impact on a substantial number of small entities. This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Rappahannock River during the event.

This temporary rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This temporary rule will be in effect for only a short period, from 11:30 a.m. to 4:30 p.m. on June 30, 2007. Although the regulated area will apply to a 3-mile segment of the Rappahannock River immediately east of Layton, Virginia, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

### Assistance for Small Entities

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

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary 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 temporary rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this temporary 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 temporary rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this temporary rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**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 a temporary § 100.35–T05–017 to read as follows:

**§ 100.35–T05–017 Rappahannock River, Essex County, Westmoreland County, Layton, Virginia.**

(a) *Regulated area.* The regulated area is established for the waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. to 4:30 p.m. on June 30, 2007.

Dated: May 23, 2007.

**Larry L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E7–11342 Filed 6–12–07; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–07–006]**

**RIN 1625–AA00**

## Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a Safety Zone in Chicago Harbor. This zone is intended to restrict vessels from portions of Chicago Harbor during fireworks displays that pose a hazard to public safety. This zone is necessary to protect the public from the hazards associated with fireworks displays.

**DATES:** This rule is effective June 28, 2007.

**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 [CGD09–07–006] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 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:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On May 4 2007, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL. in the **Federal Register** (72 FR 25217). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after Publication in the **Federal Register**. Any delay encountered in the regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Chicago Harbor during fireworks displays, thus ensuring that the maritime public is protected from any potential harm associated with such an event.

### Background and Purpose

This safety zone is necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

### Discussion of Comments and Changes

No comments were received concerning this final rule. No changes were made.

### Regulatory Evaluation

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

### Small Entities

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

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

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect 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 this safety zone 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 Proposed 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)(g), of the Instruction, from further environmental documentation. This rule establishes a safety zone area and as such is covered by this paragraph.

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 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.931 to read as follows:

**§ 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL.**

(a) *Location*. The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor between the east end of the Chicago Lock guide wall and the Chicago Harbor breakwater beginning at 41°53′24″ N, 087°35′26″ W; then south to 41°53′09″ N, 087°35′26″ W; then east to 41°53′09″ N, 087°36′09″ W; then north to 41°53′24″ N, 087°36′09″ W; then back to the point of origin.

(b) *Definitions*. The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zone and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations*. (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement*. The safety zone established by this section will be enforced only upon notice of the Captain of the Port. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption*. Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver*. For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 5, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E7–11340 Filed 6–12–07; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–07–008]**

**RIN 1625–AA00**

## Safety Zone; Milwaukee Harbor, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a safety zone in Milwaukee Harbor near Lakeshore State Park. This zone will restrict vessels from portions of Milwaukee Harbor during fireworks displays. This zone is necessary to protect the public from the hazards associated with fireworks displays.

**DATES:** This rule is effective June 28, 2007.

**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 [CGD09–07–008] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 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:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On May 4, 2007, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Milwaukee Harbor, Milwaukee, WI in the **Federal Register** (72 FR 25226). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in the regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Milwaukee Harbor during fireworks displays, thus ensuring that the maritime public is protected from any potential harm associated with such an event.

### Background and Purpose

There are approximately twenty fireworks displays launched annually at Lakeshore State Park in Milwaukee, WI. The fireworks displays are sponsored festivals located at Henry W. Maier Festival Park. The fireworks displays impact the navigable waters of Milwaukee Harbor and pose a hazard to vessels and people. This rule establishes a limited access area around the fireworks launch site to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

### Discussion of Comments and Changes

No comments were received concerning this final rule. However, the published Notice of Proposed Rule Making contained an error concerning the coordinates for this safety zone. The northeast coordinate of the safety zone was incorrect and has been changed to 43°02′00″ N, 087°53′25″ W. No other changes have been made.

### Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of this safety zone will be periodic in nature and will likely not exceed twenty, three-hour events, per year. This safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

### Small Entities

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

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

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not affect 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 this safety zone 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)(g), of the Instruction, from further environmental documentation. This rule establishes a safety zone and as such is covered by this paragraph.

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 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.935 to read as follows:

**§ 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI.**

(a) *Location.* The following area is a safety zone: the waters of Lake Michigan within Milwaukee Harbor including the Harbor Island Lagoon enclosed by a line connecting the following points: beginning at 43°02′00″ N, 087°53′53″ W; then south to 43°01′44″ N, 087°53′53″ W; then east to 43°01′44″ N, 087°53′25″ W; then north to 43°02′00″ N, 087°53′25″ W; then west to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zone and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement.* The safety zone established by this section will be enforced only upon notice of the Captain of the Port. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a

Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 5, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E7–11339 Filed 6–12–07; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–07–007]**

**RIN 1625–AA00**

## Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a Safety Zone in Chicago Harbor. This zone will restrict vessels from portions of Chicago Harbor during fireworks displays that pose a hazard to public safety. This zone is necessary to protect the public from the hazards associated with fireworks displays.

**DATES:** This rule is effective June 28, 2007.

**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 [CGD09–07–007] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 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:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On May 7, 2007, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Chicago Harbor, Navy Pier East, Chicago, IL. in the **Federal Register** (72 FR 25720). We received no letters commenting on the rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after Publication in the **Federal Register**. Any delay encountered in the regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Chicago Harbor during fireworks displays, thus ensuring that the maritime public is protected from any potential harm associated with such an event.

### Background and Purpose

This safety zone is necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

### Discussion of Comments and Changes

No comments were received concerning this final rule. No changes were made.

### Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The Coast Guard's use of this safety zone will be periodic in nature and will likely not exceed 10, one-hour events per year. This safety zone will only be enforced during the time the safety zone is actually in use. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

### Small Entities

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

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

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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 this safety zone 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)(g), of the Instruction, from further environmental documentation. This rule establishes a safety zone and as such is covered by this paragraph.

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 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.933 to read as follows:

**§ 165.933 Safety Zone, Chicago Harbor, Navy Pier East, Chicago IL.**

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor between the east end of Navy Pier and the Chicago Harbor breakwater beginning at 41°53′37″ N, 087°35′26″ W; then south to 41°53′24″ N, 087°35′26″ W; then east to 41°53′24″ N, 087°35′55″ W; then north to 41°53′37″ N, 087°35′55″ W; then back to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zones and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Lake Michigan or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port Lake Michigan or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement.* The safety zone established by this section will be enforced only upon notice of the Captain of the Port. The Captain of the

Port Lake Michigan will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Wavier.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 6, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E7–11343 Filed 6–12–07; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 51 and 52

**[EPA–HQ–OAR–2001–0004; FRL–8324–6]**

**RIN 2060–AN92**

## Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is amending its regulations to eliminate the pollution control project (PCP) and clean unit (CU) provisions included in its December 31, 2002 rulemaking entitled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-future-actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects.'' This final rule conforms the regulations to the decision by the U.S. Court of Appeals for the D.C. Circuit, *New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005), vacating the PCP and CU provisions. This action is exempt from notice-and-comment rulemaking because it is ministerial in nature.

**DATES:** This final rule is effective on June 13, 2007.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2001–0004. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Painter, Office of Air Quality Planning and Standards, (C504–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5515, fax number (919) 541–5509, e-mail: *painter.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Does This Regulation Apply to Me?

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

| Industry group | SIC [a] | NAICS [b] |
|---|---|---|
| Electric Services | 491 | 221111, 221112, 221113, 221119, 221121, 221122. |
| Petroleum Refining | 291 | 32411. |
| Chemical Processes | 281 | 325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188. |
| Natural Gas Transport | 492 | 48621, 22121. |
| Pulp and Paper Mills | 261 | 32211, 322121, 322122, 32213. |
| Paper Mills | 262 | 322121, 322122. |
| Automobile Manufacturing | 371 | 336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213. |
| Pharmaceuticals | 283 | 325411, 325412, 325413, 325414. |

[a] Standard Industrial Classification
[b] North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations. This table 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 the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in parts 51 and 52 of title 40 of the Code of Federal Regulations.

### II. Background and Rationale for Action

On December 31, 2002, EPA published a final rule (67 FR 80186) which established CU and expanded upon provisions pertaining to PCP which were initially promulgated on July 21, 1992 (57 FR 32314). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (the Court) issued an opinion vacating those portions of the 2002 and 1992 rules that pertained to CU and PCP. *New York v. EPA*, 413 F.3d 3 (D.C. Cir.), reh'g. and reh'g. en banc den. 431 F.3d 801 (2005).

This action removes from the Code of Federal Regulations (CFR) all provisions for CU and PCP containing the provisions vacated by the Court. It should be noted that nearly identical CU and PCP provisions are found in 40 CFR 52.21, 51.165, and 51.166, and that the

Court's opinion specifically addressed the CU and PCP provisions in § 52.21, but not the provisions in §§ 51.165 and 51.166. Even so, the plain language of the Court's opinion clearly applies to the parallel constructions in those latter provisions; and as a result, today's action removes those provisions as well. Because the Court vacated the language of the CU and PCP provisions as well as the legal constructs upon which they were based, the EPA is rescinding the CU and PCP provisions by way of a final rulemaking which is effective upon publication in the **Federal Register**. We are not providing an opportunity for comment.

The Administrative Procedure Act of 1946 (APA) makes provision for the procedural path we are following in this action. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. The APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

In this action, the Agency finds that notice and comment is unnecessary. This action is ministerial in nature. It simply implements the decision of the D.C. Circuit as it pertains to CU and PCP.

In addition, notice and comment would be contrary to the public interest by unnecessarily delaying the removal of the unlawful CU and PCP provisions in the CFR. Owner/operators of facilities capable of causing air pollution are subject to CAA regulations governing the manner in which they might act. Substantial costs are frequently associated with project delays or inappropriate actions. To resolve regulatory concerns up front, those who would pursue projects which might be subject to Federal restrictions rely upon the CFR to provide authoritative answers as to what requirements apply to a given proposed project.

## III. Implementation

For the reasons cited above, EPA is making this action effective upon publication. *See* 5 U.S.C. 553(d)(3). This action removes content from the CFR that has been found to be contrary to the CAA by a Federal appeals court. This is a ministerial but necessary action on the part of the EPA. Given the substantial costs to owner/operators of projects associated with delays and uncertainty, EPA has good cause to act in the public interest to implement the court's remedy by amending the CFR without delay.

The Court's vacatur of PCP and CU provisions meant that these provisions could no longer be used. Thus, today's rule changes are immediately effective for jurisdictions using the Federal PSD program (codified at § 52.21 for areas without an approved PSD program, for which we are the reviewing authority, or for which we have delegated our authority to issue permits to a State or local reviewing authority) and for State and local agency programs implementing part C (PSD permit program in § 51.166) or part D (nonattainment NSR permit program in § 51.165) under an approved State Implementation Plan (SIP). Permitting authorities with approved SIPs containing any or all of the 2002 CU, 2002 PCP, or 1992 PCP provisions should remove those provisions as soon as feasible, which may be in conjunction with the next available SIP revision. Furthermore, recognizing that some States also adopted our past guidance policy on PCP [1] into their approved SIPs, we believe that these portions of their SIPs should also be removed in light of the Court decision.[2] Because of the Court decision, these provisions are unlawful and may not be applied even prior to their removal from the SIPs.

## IV. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) determined this rule is a significant regulatory action for the purpose of EO 12866 and requested that we submit the rule for OMB review. It does not meet requirements for review under Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). It also does not meet the requirements for review under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, this rule does not impose any impact on small entities and thus does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of CU and PCP provisions from NSR and PSD requirements will reduce the associated overall reporting and recordkeeping burden estimates, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* At some point in the future, EPA will re-determine the total burden associated with the NSR and PSD rules and will adjust the estimates to reflect the effects of this action. The reporting and recordkeeping burdens associated with NSR and PSD are approved by OMB under OMB No. 2060–0003. The current public reporting burden for NSR and PSD is estimated to be 4,878,634 hours. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. However, section 808 of that Act provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 13, 2007. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

[1] Memorandum dated July 1, 1994. ''Pollution Control Projects and New Source Review (NSR) Applicability'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I–X.

[2] In its Opinion, the Court stated on pages 8–9 that ''EPA also erred in exempting from NSR certain Pollution Control Projects (''PCPs'') that decrease emissions of some pollutants but cause collateral increases of others. The statute authorizes no such exception.''

**V. Statutory Authority**

The statutory authority for this action is provided by sections 165–169, 171–173, and 301 of the Act as amended (42 U.S.C. 7475–7479, 7501–7503, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

**VI. Judicial Review**

Under section 307(b)(1) of the Act, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 13, 2007. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practices and procedures, Air pollution control, Baseline emissions, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Plantwide applicability limitations, Pollution control projects, Sulfur oxides.

*40 CFR Part 52*

Environmental protection, Administrative practices and procedures, Air pollution control, Baseline emissions, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Plantwide applicability limitations, Pollution control projects, Sulfur oxides.

Dated: June 5, 2007.

**Stephen L. Johnson,**

*Administrator.*

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

## PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

### Subpart I—[Amended]

■ 2. Section 51.165 is amended as follows:

■ a. By removing and reserving paragraph (a)(1)(v)(C)(*8*).
■ b. By removing paragraph (a)(1)(vi)(C)(*3*).
■ c. By removing paragraph (a)(1)(vi)(E)(*5*).
■ d. By removing and reserving paragraph (a)(1)(xxv).
■ e. By removing and reserving paragraph (a)(1)(xxix).
■ f. By removing and reserving paragraph (a)(2)(ii)(E).
■ g. By revising paragraph (a)(2)(ii)(F).
■ h. By removing paragraph (a)(2)(iv).
■ i. By removing and reserving paragraphs (a)(3)(ii)(H) and (I).
■ j. By revising paragraph (a)(6) introductory text.
■ k. By removing and reserving paragraphs (c), (d), and (e).

**§ 51.165 Permit requirements.**

(a) * * *
(2) * * *
(ii) * * *
(F) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(ii)(C) through (D) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

* * * * *

(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (a)(1)(xviii)(B)(*1*) through (*3*) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (v) of this section.

* * * * *

■ 3. Section 51.166 is amended as follows:
■ a. By removing and reserving paragraph (a)(7)(iv)(*e*).
■ b. By revising paragraph (a)(7)(iv)(*f*).
■ c. By removing paragraph (a)(7)(vi).
■ d. By removing and reserving paragraph (b)(2)(iii)(*h*).
■ f. By removing paragraph (b)(3)(vi)(*d*).
■ g. By removing and reserving paragraph (b)(31).
■ h. By removing and reserving paragraph (b)(41).
■ i. By revising paragraph (r)(6) introductory text.
■ j. By removing and reserving paragraphs (t), (u), and (v).

**§ 51.166 Prevention of significant deterioration of air quality.**

(a) * * *
(7) * * *
(iv) * * *
(*f*) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(7)(iv)(*c*) through (*d*) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

* * * * *

(r) * * *
(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(40)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (r)(6)(i) through (v) of this section.

* * * * *

## PART 52—[AMENDED]

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

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

### Subpart A—[Amended]

■ 5. Section 52.21 is amended as follows:
■ a. By removing and reserving paragraph (a)(2)(iv)(*e*).
■ b. By revising paragraph (a)(2)(iv)(*f*).

■ c. By removing paragraph (a)(2)(vi).
■ d. By removing and reserving paragraph (b)(2)(iii)(*h*).
■ e. By removing paragraph (b)(3)(vi)(*d*).
■ f. By removing and reserving paragraph (b)(32).
■ g. By removing and reserving paragraph (b)(42).
■ h. By revising paragraph (r)(6) introductory text.
■ j. By removing and reserving paragraphs (x), (y), and (z)

**§ 52.21 Prevention of significant deterioration of air quality.**

(a) * * *
(2) * * *
(iv) * * *
(*f*) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(*c*) through (*d*) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

* * * * *

(r) * * *
(6) The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions.

* * * * *

[FR Doc. E7–11289 Filed 6–12–07; 8:45 am]
BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2006–0590; FRL–8325–8]**

## Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Request for Rescission

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the rescission of the Federal implementation plan promulgated under the Clean Air Act for the regulation of fugitive sulfur oxides emissions from a copper smelter that had operated in the State of Nevada but that is no longer in existence. This rescission was proposed in the **Federal Register** on August 28, 2006. The intended effect is to rescind unnecessary provisions from the applicable plan.

**DATES:** *Effective Date:* This rule is effective on July 13, 2007.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2006–0590 for this action. The index to the docket is available electronically at *http://regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

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

**Table of Contents**

I. Proposed Action
II. Public Comments and EPA's Response
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On August 28, 2006 (71 FR 50875), EPA proposed approval and disapproval of portions of the State's rescission request and approval of certain replacement provisions. One of the rescission requests for which we proposed approval involved a Federal implementation plan (FIP) that we promulgated in the 1970's at 40 CFR 52.1475(c), (d), and (e) to regulate sulfur oxides from the Kennecott Copper Company smelter located in White Pine County, Nevada. As described further in our Technical Support Document (TSD) for the proposed rule, we found that the last vestige of the Kennecott Copper Company McGill facility, which was the subject of the FIP requirements in 52.1475, was removed from the area in 1993, and, therefore, the related FIP provisions are obsolete. The TSD contains more information about our proposed action. On January 3, 2007 (72 FR 11), we took final action on most of the provisions for which we had proposed action on August 28, 2006. This is the second final action related to our August 28, 2006 proposal. We will take final action on the remaining few provisions for which we proposed action on August 28, 2006 in a third separate action.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments related to the proposed rescission of the FIP for regulation of the Kennecott Copper Company smelter in White Pine County, Nevada.

### III. EPA Action

As authorized in section 110(k)(3) of the Clean Air Act, EPA is finalizing the approval of the rescission of the Federal implementation plan promulgated for the regulation of fugitive sulfur oxides emissions from the Kennecott Copper Company smelter that had operated in White Pine County, Nevada, but that is no longer in existence. EPA is codifying this action by revising 40 CFR 52.1475 to remove paragraphs (c), (d), and (e).

### IV. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' This action will rescind a Federally promulgated rule for an air pollution emissions source that no longer exists.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action will merely rescind a Federally promulgated rule for an air pollution emissions source that no longer exists.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant impact on a substantial number of small entities because this rule merely rescinds a Federally promulgated rule for an air pollution emissions source that no longer exists.

*D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action rescinds a Federally promulgated rule for an air pollution emissions source that no longer exists, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132, Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely rescinds a Federally promulgated rule for an air pollution emissions source that no longer exists, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled (Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

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

This rule is not subject to Executive Order 13045, Protection of Children from Environmental Health risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it finalizes the rescission of a federally promulgated rule.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use (voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Because this rule amendment rescinds a federal implementation plan for a source that has closed down, this rule amendment that does not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 13, 2007.

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: June 5, 2007.

**Stephen L. Johnson,**

*Administrator.*

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

## PART 52—[AMENDED]

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

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

## Subpart DD—Nevada

**§ 52.1475 [Amended]**

■ 2. Section 52.1475 is amended by removing paragraphs (c), (d), and (e).

[FR Doc. E7–11321 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2006–0716; FRL–8319–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Indiana; Exemption from VOC Requirements for Sources Subject to the National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing or Reinforced Plastics Composites Manufacturing

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to the Indiana Department of Environmental Management's (IDEM) volatile organic compound (VOC) rules for new facilities into the Indiana State Implementation Plan (SIP). This revised rule, submitted by IDEM on July 17, 2006, exempts facilities subject to the boat manufacturing and reinforced plastics composites production national emission standards for hazardous air pollutants (NESHAPS) from the requirement to do a case-by-case State Best Available Control Technology (BACT) analysis under the Indiana SIP, provided that they comply with the applicable NESHAPS. This rule revision is approvable because the only hazardous air pollutant covered by these NESHAPS rules is styrene, a toxic substance which is also classified as a VOC. Therefore, the VOC control requirements in these rules are always applicable. In addition, the provisions in these rules are enforceable and result in a clearly defined level of VOC reductions dependent upon the specific type of operation. These rules were proposed for approval on January 25, 2007, and comments were received supporting EPA's approval.

**DATES:** This final rule is effective on July 13, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0716. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through

*www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?
II. What Action is EPA Taking and What is the Reason for this Action?
III. Statutory and Executive Order Reviews

## I. What Public Comments Were Received on the Proposed Approval and What Is EPA's Response?

*Comment:* EPA received one comment on its January 25, 2007 proposal. The American Composites Manufacturers Association (ACMA) stated that it agreed with EPA that the VOC emissions from these facilities are subject under the NESHAPS to enforceable emission reductions, and added that an additional requirement to comply with the SIP VOC rules would place a redundant and unnecessary administrative burden on both the facilities and Indiana. ACMA referenced a study conducted for it in 2003 that concluded that a facility that meets the NESHAPS requirements would also comply with VOC SIP requirements, including lowest achievable emission rate (LAER), BACT and reasonably available control technology (RACT). ACMA strongly supports EPA's approval of this proposed amendment to the Indiana SIP.

*EPA response:* Although ACMA stated its strong support for EPA approval of this exemption for new sources subject to the boat manufacturing and reinforced plastic composites production NESHAPS, it claimed that a facility meeting the NESHAPS requirements would also meet LAER, BACT and RACT. LAER is the new source control requirement for nonattainment areas, as required by 326 IAC 2–3 (Nonattainment New Source Review). Best available control technology, in the context of ACMA's comment, appears to refer to the new source control requirement for attainment areas, as required by 326 IAC 2–2 (Prevention of Significant Deterioration). (Please note that this is not the same BACT analysis performed by the State under SIP rule 326 IAC 8–1–6). RACT is the VOC control SIP requirement for existing sources in ozone nonattainment areas.

In contrast to NESHAPS requirements, LAER and BACT are the result of case-by-case analyses which, as new and improved control technologies are introduced, tend to become more stringent over time. EPA has established a presumptive norm for RACT for a number of source categories, not including boat manufacturing and reinforced plastic composites production. For these other categories, RACT is a case-by-case analysis based upon the technical and economic feasibility of control, in contrast to the subject NESHAPS, which were based upon a set of industry average parameters.

## II. What Action Is EPA Taking and What Is the Reason for This Action?

EPA is approving Indiana's revision to its SIP consisting of an amendment to 326 IAC 8–1–6, new facilities; general reduction requirements. This rule exempts boat manufacturers subject to 326 IAC 20–48, NESHAPS for boat manufacturing, or reinforced plastics composites manufacturers subject to 326 IAC 20–56, NESHAPS for reinforced plastics composites production facilities, from the requirement to do a case-by-case State BACT analysis, for the purposes of 326 IAC 8–1–6, provided they comply with the applicable NESHAPS. Previously, new boat manufacturing or reinforced plastics composites manufacturing facilities with potential emissions of 25 tons or more per year of VOC were required to reduce VOC emissions by using BACT under 326 IAC 8–1–6. In this case, establishing specific standards in place of a case-by-case analysis improves the clarity, predictability, and timeliness of permit decisions that are currently subject to 326 IAC 8–1–6.

It should be noted, however, that approval of this exemption to 326 IAC 8–1–6 does not address (or take action on) whether the boat manufacturing or reinforced plastics composites production NESHAPS represent RACT, BACT (under PSD) or LAER (under Nonattainment New Source Review).

## III. Statutory and Executive Order Reviews

*Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

*Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

*Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

*Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

*National Technology Transfer Advancement Act*

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

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

*Congressional Review Act*

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

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 August 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: May 18, 2007.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

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

## PART 52—[AMENDED]

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

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

## Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c) (179) to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

(179) On July 17, 2006, Indiana submitted final adopted revisions, which add 326 IAC 8–1–6 (3)(B) and (C), to its VOC rules for new facilities in 326 IAC 8–1–6 as a requested revision to the Indiana state implementation plan. EPA is approving these revisions, which exempt boat manufacturers subject to NESHAPS for boat manufacturing, or reinforced plastics composites manufacturers subject to NESHAPS for reinforced composites production facilities, from the requirement to do a best available control technology analysis provided they comply with the applicable NESHAPS.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 8: Volatile Organic Compound Rules, Rule 1: General Provisions, Section 6: New facilities; general reduction requirements. Final adopted by the Air Pollution Control Board on March 1, 2006. Filed with the Secretary of State on May 25, 2006, and became effective June 23, 2006. Published in the Indiana Register on July 1, 2006 (29 IR 3350).

[FR Doc. E7–11290 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2006–0559; FRL–8133–2]**

## Diuron; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for diuron in or on cactus (with regional restrictions for use); spearmint, tops; peppermint, tops; and fish–freshwater finfish, farm raised. Interregional Research Project Number 4 (IR–4) and the Catfish Farmers of America requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective June 13, 2007. Objections and requests for hearings must be received on or before August 13, 2007, 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–2006–0559. 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 web site 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:**

Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@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 the 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–2006–0559 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 August 13, 2007.

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–2006–0559, 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 26, 2006 (71 FR 42390) (FRL–8079–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filings of a pesticide petitions (PP 2E6438, 6E3390 and 6F4680) by Interregional Research Project Number 4 (IR-4), 681 Highway 1 South, North Brunswick, NJ 08902 and the Catfish Farmers of America, 1100 Hwy. 82 East, Suite 202, Indianola, MS 38751. The petitions requested that 40 CFR 180.106 be amended by establishing tolerances for residues of the herbicide diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea in or on cactus, prickly pear at 0.05 part per million (ppm) (6E3390), mint at 1.5 ppm (2E6438) and freshwater finfish, farm raised at 2.0 ppm (6F4680). That notice referenced a summary of the petitions prepared by Dupont, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments received on the notice of filing are discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has recommended certain changes to the petitions including:

1. Revised tolerance levels for certain commodities;
2. A revised tolerance expression to be applied to all new uses; and
3. Revised commodity terms for some commodities.

The reasons for these changes are explained in Unit V.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the 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 the 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 the 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....'' These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

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 tolerance for combined residues of diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea and its metabolites convertible to 3,4-dichloroaniline on cactus at 0.05 ppm, spearmint, tops at 1.5 ppm, peppermint, tops at 1.5 ppm and fish - freshwater finfish, farm raised at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance 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. Specific information on the studies received and the nature of the adverse effects caused by diuron 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*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2006–0059. Additional information regarding this chemical can also be found in the docket for the reregistration eligibility decision (RED) for diuron identified as EPA–HQ–OPP–2002–0249.

Diuron has low acute toxicity (Toxicity Category 3-4) by the oral, dermal, or inhalation exposure routes. Diuron is not an eye or skin irritant, and not a skin sensitizer. The primary target organs are the hematopoietic system, the bladder, and renal pelvis. Erythrocyte damage resulted in hemolytic anemia and compensatory hematopoiesis, which were manifested as significantly decreased erythrocyte counts, hemoglobin levels, and hematocrit, and increased mean corpuscular volume (MCV), mean corpuscular hemoglobin (MCH), abnormal erythrocyte forms, reticulocyte counts, and leukocyte count. Consistent observations of erythrocytic regeneration were seen in chronic toxicity studies in rats, mice and dogs. Gross pathology findings in chronic rat and mouse studies showed increased incidences of urinary bladder edema and wall thickening at high doses. Microscopic evaluation showed dose-related increases in the severity of epithelial focal hyperplasia of the urinary bladder and renal pelvis in both sexes. The available data did not reveal any developmental or reproductive toxicity. The Carcinogenicity Peer Review Committee (CPRC) characterized diuron as a ''known/likely'' human carcinogen based on urinary bladder carcinomas in both sexes of the Wistar rat, kidney carcinomas in the male rat, and mammary gland carcinomas in the female NMRI mouse. Diuron was not mutagenic in bacteria or in cultured mammalian cells and no indication of DNA damage in primary rat hepatocytes was observed. There were marginal statistically significant increases in cells with structural aberrations in a Sprague Dawley rat *in vivo* bone marrow chromosomal aberration assay. However, the levels of aberrations were within historical control range and assessed negative.

The Metabolism Assessment Review Committee (MARC) recommended that a separate dietary cancer assessment be conducted for N'-(3-chlorophenyl)-N,N-dimethyl urea (MCPDMU), a potential residue of concern in drinking water, but not found in food (in plant or animal metabolism studies). The MARC raised concerns for MCPDMU based on an analogous compound, N'-(4-chlorophenyl)-N,N-dimethyl urea (monuron). With the exception of the position of the chlorine, the structures are identical. There are cancer concerns for monuron but the target organs are different than those affected by diuron. In the absence of the data needed for a more comprehensive evaluation of MCPDMU, the carcinogenic risk assessment was conducted using the $Q_1$* of monuron.

*B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from 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) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC 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 risks by comparing aggregate 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 LOC by all applicable uncertainty/safety factors. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (''MOE'') called for by the product of all applicable uncertainty/safety factors is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. 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/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for diruon used for human risk assessment can be found at *www.regulations.gov* in document Diuron. Updated Aggregate Risk Assessment to Support Permanent Tolerances for Residues in Prickly Pear Cactus, Peppermint Tops, Spearmint Tops, and Freshwater Finfish, Farm-Raised at page 4 in Docket ID EPA–HQ–OPP–2006–0059.

There are no adverse effects attributed to a single exposure identified in any available studies for diuron. In addition, diuron has low acute toxicity and no developmental or neurotoxic concerns. Therefore, no acute dietary endpoint was chosen and no acute dietary risk assessment was conducted. Also, no systemic toxicity was observed following repeated dermal dosing up to 1,200 mg/kg/day. Therefore, no short- or intermediate-term dermal endpoints were chosen either. The short-term incidental oral and the inhalation endpoints are based on decreased maternal body weight and food consumption observed in a rabbit developmental toxicity study [No Observable Adverse Effect Level (NOAEL) = 10 mg/kg/day]. The intermediate-term incidental oral and intermediate-term inhalation endpoints are based on hematological effects observed at 10 mg/kg at 6 months in the chronic rat study. The NOAEL is 1 mg/kg/day. The chronic dietary, and long-term dermal and inhalation endpoints are based on hemolytic anemia and compensatory hematopoiesis [Lowest Observable Adverse Effect Level (LOAEL) = 1.0 mg/kg/day]. Since the dose and endpoint for establishing the chronic dietary reference Dose (RfD) is a LOAEL and a NOAEL was not established, a total uncertainty factor (UF) of 1,000 was applied (a UF of 100 to account for both interspecies extrapolation and intra-species

variability and an UF of 10 since the 10X FQPA safety factor has been retained to protect infants and children). A low dose linear extrapolation model with a $Q_1$* of 1.91 x $10^{-2}$ (mg/kg/day)$^{-1}$was applied to the animal data for the quantification of human risk to diuron, based on the urinary bladder carcinomas in the rat.

As discussed in Unit III.A., a separate dietary cancer assessment was conducted for N'-(3-chlorophenyl)-N,N-dimethyl urea (MCPDMU), a potential residue of concern in drinking water, but not found in food. A low dose linear extrapolation model with a $Q_1$* of 1.52 x $10^{-2}$ (mg/kg/day)$^{-1}$ was applied to the animal data for the quantification of human risk, based on male rat liver neoplastic nodule and/or carcinoma combined tumor rates.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to diuron, EPA considered exposure under the petitioned-for tolerances as well as all existing diuron tolerances in (40 CFR 180.106). EPA assessed dietary exposures from diuron and its metabolites convertible to 3,4-dichloroaniline 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.

No such effects were identified in the toxicological studies for diuron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the EPA analyses incorporated tolerance level residues for some commodities as well as anticipated residues (ARs) for other commodities, based on a combination of average field trial data and USDA/Pesticide Data Program (PDP) monitoring data. The chronic exposure estimates were further refined with percent crop treated (PCT) information for some crops. In some cases, DEEM(TM) (ver. 7.78) default processing factors were used, but empirical processing factors were used when available.

iii. *Cancer.* —a. *Diuron.* In conducting the cancer dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the EPA analyses incorporated tolerance level residues for some commodities as well as anticipated residues (ARs) for other commodities, based on a combination of average field trial data and USDA PDP monitoring data. The cancer exposure estimates were further refined with PCT information for some crops. In some cases, DEEM(TM) (ver. 7.78) default processing factors were used, but empirical processing factors were used when available.

b. *MCPDMU.* EPA has identified MCPDMU as a potential residue of concern of diuron that may be found in drinking water but not found in food. In the absence of a metabolism study in fish, based on potential concern for residues of the drinking water, EPA conducted an assessment based on a worst-case dietary exposure analysis for the degradate MCPDMU, including residues in drinking water and a conservative estimate of potential residues in fish. EPA estimated the MCPDMU drinking water residue value of 1 ppb, based on monitoring data and assumed 25% (i.e., 0.5 ppm) of the residue in fish could be attributed to the degradate. This is a conservative assumption of a 500-fold accumulation of the degradate in fish, whereas acceptable metabolism studies in rat, ruminants and poultry indicate the majority of the residue in animals consists of dichlorinated and hydroxy metabolites; further, the rat metabolism study indicates diuron residues do not bioaccumulate. Therefore, the assumption that 25% of the tolerance-level residue in fish is comprised of the MCPDMU degradate is considered to be conservative.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) of FFDCA require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

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

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 such pesticide residue;

b. The exposure estimate does not underestimate exposure for any significant subpopulation group; and

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 section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

1% alfalfa, 1% almonds, 10% apples, 5% artichokes, 55% asparagus, 1% barley, 50% blackberries, 30% blueberries, 1% corn, 25% cotton, 20% filberts, 10% grapes, 45% grapefruit, 15% lemon, 50% limes, 20% Macadamia nut, 5% oats, 15% olives, 50% oranges, 10% peaches, 10% pears, 5% pecans, 90% mint, 1% pistachios, 30% raspberries, 15% sugarcane, 30% tangerines, 15% walnuts, and 1%wheat.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. 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 Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

There are existing tolerances for residues of diuron on peppermint, hay at 2 ppm. However, the EPA has determined the preferred commodity term should be peppermint, tops. Therefore, the PCT estimates used for mint are based on the existing registration and are not projections.

The Agency believes that the three conditions listed in Unit III.C.iv. have been met. With respect to Condition 1, 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 2 and 3, 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 information on the regional consumption of food to which diuron may be applied in a particular area.

2. *Dietary exposure from drinking water*. The drinking water exposure assessment conducted in conjunction with the 2003 RED noted that surface water monitoring data resulted in diuron residues less than 1 parts per billion (ppb) (*http://www.regulations.gov*, document 0006 - Docket ID EPA–HQ–OPP–2002–0249). For ground water, modeling results indicted that residues of diuron and degradates would be at most 0.6 ppb for long-term exposure assessment. For the current assessment, EPA used PDP monitoring data from 2003 and 2004, in which 1,072 samples of raw and treated water were analyzed for diuron residues. Residues were detected in 12 samples, ranging from 27 to 267 parts per trillion (ppt), with an average of 20.2 ppt (0.020 ppb). For chronic dietary risk assessment, the water concentration of value 0.020 ppb was used to access the contribution to drinking water. These estimates of drinking water concentrations were directly entered into the dietary exposure model.

The drinking water exposure assessment conducted in conjunction with the 2003 RED noted that surface water monitoring data resulted in diuron residues less than 1 ppb. For ground water, modeling results indicated that residues of diuron and degradates would be at most 0.6 ppb for long-term exposure assessment. The analysis in the RED noted that the potential for residues in drinking water sources is more likely to occur from run-off to surface water, and the ground water sources of drinking water are likely to be less vulnerable to contamination with diuron. The RED cited numerous monitoring studies from areas known for high diuron usage. The drinking water risks in the RED were calculated from diuron residues in a Florida surface water monitoring study in which the highest residue found was 1.2 ppb, but the 90$^{th}$ and 95$^{th}$ percentile residues were both less than the limit of detection in the study, which ranged from 0.2 to 0.4 ppb. For the current assessment, drinking water residues were estimated from PDP monitoring data from 2003 and 2004, in which 1,072 samples of raw and treated water were analyzed for diuron residues. Residues were detected in 12 samples, ranging from 27 to 267 ppt, with an average detected residue of 20.2 ppt (0.02 ppb). This average of detected residues was considered to be more appropriate for estimating cancer risk from drinking water than a high-end estimate of surface water residues from the Florida monitoring data. However, the 2 sets of monitoring data support the conclusion that potential residues in surface water are much less than 1 ppb.

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).

In conjunction with the RED, the agency concluded that all registered uses were eligible for reregistration, provided labeling requirements and mitigation measures were observed. This included voluntary cancellation of uses allowing application to home lawns. Currently, all registered labels for diuron no longer allow applications to home lawns. As a result the current uses registered that could result in non-occupational, non-dietary exposures are diruon added to paints and stains and residential ponds and aquariums.

Exposures of concern to diuron resulting from residential uses is expected to be negligible. The existing residential uses for diuron result in only short-term exposures, generally less than 7 days. No short-term dermal endpoints have been identified for diuron. A short-term incidental oral endpoint was identified. However, all residential uses to home lawns have been cancelled so incidental oral exposures are not expected. Inhalation endpoints have been identified for diuron. However, diuron has a low vapor pressure (2 x $10^{-7}$ mm Hg@30°C) and therefore, absorption by the inhalation route is likely to be low. Potential residential handler exposures from applying paints and stains containing diuron were assessed in the 2003 RED. Conservative assumptions included 2 days of painting per year for 50 years of a 70 year lifetime. However, based on information gathered through the RED process it was determined that less than 1% of paint sold contains diuron, and that such paints would likely only be used in rooms subject to high moisture (e.g., bathrooms). Therefore, lifetime exposure to home applicators of diuron-containing products is likely to negligible. Postapplication inhalation exposure resulting from the use of diuron in residential ponds and aquariums is also expected to be minimal based on the extremely high dilution rate. Therefore, an exposure assessment was not conducted for non-occupational, non-dietary exposures.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the 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.''

Based on available data, EPA has previously concluded that diuron, propanil and linuron, all of which contain 3,4 dichloroaniline (3,4-DCA) in their structures, do not share a common mechanism of toxicity. (Additional information regarding this conclusion can be found in the docket for the RED for diuron identified as EPA–HQ–OPP–2002–0249.)

Propanil readily metabolizes to 3,4-DCA, but neither diuron nor linuron metabolize to 3,4–DCA in plant or animal metabolism studies. EPA previously recommended against aggregating residues of 3,4 DCA for the propanil and diuron risk assessments. The following considerations support the recommendation:

- 3,4-DCA is a significant residue of concern for propanil, but is not a residue of concern per se for diuron;
- The analytical method for quantifying residues of concern from applications of diuron converts all residues to 3,4-DCA as a technical convenience. However, 3,4-DCA is not a significant residue in diuron plant and animal metabolism or hydrolysis studies. Therefore, the agency determined that all residues hydrolyzable to 3,4-DCA would be included in the tolerance expression for

diuron, because no validated enforcement method is available for quantification for the actual residues of concern for diuron.

• Propanil and its metabolite 3,4-DCA were found to induce methemoglobinemia, the endpoint of concern for propanil. Diuron has not been shown to cause this effect. Diuron induces hemolytic anemia and compensatory hematopoiesis, which are mechanistically different from methemoglobinemia.

• Linuron and diuron metabolism studies show that both chemicals metabolize to DCPU and DCPMU. However, for reasons that are yet unknown, these chemicals do not induce the same toxic effects in mammals. Submitted data indicate that diuron is primarily (though not exclusively) metabolized by the hydroxylation of the urea group in either the methyl or the amino position and conjugated. Linuron, on the other hand, appears to be primarily ring-hydroxylated and conjugated. The methoxy group is removed, followed by the methyl group, with ring hydroxylation. Unlike linuron, hydroxylation of the phenyl ring is not a major metabolite pathway of diuron and, both methyl groups are lost.

• Methemoglobinemia is the dominant toxic effect of concern for linuron. As mentioned above, diuron does not induce methemoglobinemia. Mechanistic and reproductive studies show that linuron, and to some extent propanil, is an androgen receptor antagonist and that linuron induces testicular abnormalities in rodents. Studies with diuron showed no indications of any endocrine effects and no developmental or reproductive effects.

• Although the mechanisms of action for the differing effects induced by the two ureas, diuron and linuron, are not entirely known, there is sufficient cause to believe that exposures from the two compounds should not be cumulated.

• The estimated dietary cancer risk for diuron did not include residues from linuron and propanil since it was recognized that the target organs for tumor induction for diuron are different from those for linuron and propanil, and data were available which indicated that the mechanism of action may be different for diuron.

For the purposes of this tolerance action, therefore, EPA has not assumed that diuron has 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 the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold 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 data base 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. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is an acceptable developmental toxicity study in rabbits and an acceptable 2-generation reproduction study in rats. A developmental toxicity study in rats was classified as unacceptable due to deficiencies in analytical data on the sample analysis; however, the EPA considers the developmental toxicity study in rats adequate for the FQPA susceptibility assessment based on the observation that the developmental toxicity NOAEL was higher than the maternal NOAEL. The EPA has also concluded that a developmental neurotoxicity (DNT) study is not required.

There is no indication of increased susceptibility to young exposed to diuron in the available studies. In the developmental toxicity study in rabbits, there were no developmental effects at the highest dose tested. In the developmental toxicity study in rabbits and in the 2-generation rat reproduction study, developmental/offspring effects were observed only at maternally/parentally toxic dose levels.

There are no neurotoxic signs in any of the submitted subchronic or chronic studies.

3. *Conclusion*. The chronic dietary endpoint for diuron used in risk assessment is based on a LOAEL of 1 mg/kg/day from the chronic toxicity/carcinogenicity study in rats. EPA has retained the 10X FQPA safety factor for diuron because of reliance on a LOAEL in the rat chronic toxicity study and because the data in that study or other studies did not show that a smaller factor would be safe. EPA has determined that reliable data show that it would be safe for infants and children provided the FQPA safety factor of 10X is retained and no additional safety factors are needed. That decision is based on the following findings:

i. There are no uncertainties with the toxicology database other than with regard to the lack of a NOAEL in the rat chronic toxicity study. The only outstanding toxicity data requirement for diuron is a 28–day inhalation study which is required to address the concern for inhalation exposure to workers during the application of diuron. Occupational exposures are not considered under section 408 of FFDCA. Postapplication inhalation exposure resulting from the indoor use of diuron in paints is expected to be minimal because of the low vapor pressure of diuron, and because diuron-treated paint is only likely to be used in rooms where high humidity is expected (e.g... a bathroom), and would rarely be used in the entire house based on the use pattern. Additionally, based on information gathered through the RED process it was determined that less than 1% of paint sold contains diuron. As a result, non-occupational exposure to diuron via inhalation is not expected to occur with infants and children. Therefore, the 28–day inhalation study will not change the endpoints used in risk assessment to address the potential risks to infants and children.

The developmental toxicity study in rats is classified as unacceptable due to deficiencies in analyses of the test material and dosing solutions. However, the EPA has not required the study be repeated since it is considered adequate for the FQPA susceptibility assessment based on the observation that the developmental toxicity NOAEL was higher than the maternal NOAEL, and because maternal and developmental toxicity were well-defined at their respective LOAELs. Finally, the rabbit is considered to be the more sensitive species than the rat for developmental toxicity, and the rabbit developmental study is acceptable. The chronic toxicity study in dogs has also been classified as unacceptable due to the purity of the test material, as well as potential problems with stability and homogeneity issues related to the test material. However, the EPA determined that a repeated chronic dog study is not required; similar effects were observed in rats and dogs, but the effects in the

rat occurred at lower doses and the rat NOAEL serves as the dose for risk assessment. Therefore, the EPA concluded that a new chronic dog study would not change the endpoint chosen for risk assessment.

The data base as a whole is adequate for pre- and post-natal toxicity evaluation.

ii. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* or postnatal exposure. There is no indication of increased susceptibility to young exposed to diuron in the available studies. In the developmental toxicity study in rabbits, there were no developmental effects at the highest dose tested. In the developmental toxicity study in rabbits and in the 2-generation rat reproduction study, developmental/offspring effects were observed only at maternally/parentally toxic dose levels.

iii. There are no neurotoxic signs in any of the submitted subchronic or chronic studies. A developmental neurotoxicity study (DNT) for diuron is not required.

iv. There are no residual uncertainties identified in the exposure databases. The dietary (food and drinking water) and non-dietary (residential) exposure assessments will not underestimate the potential exposures for infants and children. The dietary food exposure assessments were performed based on reliable field trial data where tolerance level residues for some commodities as well as anticipated residues (ARs) for other commodities, based on a combination of average field trial data and USDA/PDP monitoring data. Average PCT values were assumed for chronic dietary assessment for some crops and 100 PCT treated were assumed for the remaining uses. Drinking water estimates were based on monitoring studies and USDA/PDP monitoring data. EPA expects any residential exposure from use of diuron to be negligible. The EPA is confident that these assessments will not underestimate the exposure and risks posed by diuron.

*E. Aggregate Risks and Determination of Safety*

Safety is assessed for acute and chronic risks by comparing aggregate 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 LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (''MOE'') called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk*. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13-50 years old. No acute risk is expected from exposure to diuron.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to diruon from food and water will utilize 19% of the cPAD for the population group children 1-2 years old, the subpopulation group with greatest exposure. There are no residential uses for diuron that result in chronic residential exposure to diuron.

3. *Short-term risk and Intermediate risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The current uses registered that could result in non-occupational, non-dietary exposures are from diuron added to paints and stains as well as applications to residential ponds and aquariums. However, EPA expects any residential exposure from use of diuron to be negligible. Therefore, no short-term and intermediate-term risk is expected from exposure to diuron as a result of non-occupation, non-dietary exposures.

4. *Aggregate cancer risk for U.S. population*. Using the exposure assumptions described in this unit for cancer for diuron, EPA has concluded that exposure to diruon from food and water will result in a cancer risk estimate of $1.4 \times 10^{-6}$ for the general U.S. population. This risk estimate is within the range of 1 in 1 million that EPA considers negligible risk for cancer. EPA has generally concluded that computed cancer risks as high as 3 in 1 million fall within this risk range.

Using the exposure assumptions described in this unit for cancer for the degradate MCPDMU, EPA has concluded that exposure to MCPDMU from fish and water will result in a cancer risk estimate of $5.9 \times 10^{7}$, which is not of concern.

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 diuron residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The principle of the determination is the hydrolysis of diuron and its metabolites by alkaline reflux to 3,4-dichloroanaline (3,4-DCA), followed by a distillation of the aniline into an acid solution. The acid distillate is made alkaline with concentrated base and subsequently extracted into an organic solvent (hexane) and analyzed by gas chromatography. With the modified method, recoveries exceeded 70% and the limit of quantitation (LOQ) is 0.01. 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, Canadian, or Mexican tolerances or maximum residue limits for diuron in cactus; spearmint, tops; peppermint, tops; and fish - freshwater finfish, farm raised. Therefore, harmonization with international tolerances is not an issue for this action.

*C. Response to Comments*

Several comments were received from a private citizen objecting to establishment of tolerances. The Agency has received similar comments from this commenter on numerous previous occasions. Refer to **Federal Register** of June 30, 2005 (70 FR 37686; FRL–7718–3); January 7, 2005 (70 FR 1354; FRL–7691–4); and October 29, 2004 (69 FR 63096; FRL–7681–9) for the Agency's response to these objections. In addition, the commenter noted several adverse effects seen in animal toxicology studies with diruon and claims because of these effects no tolerance should be approved. EPA has found, however, that there is a reasonable certainty of no harm to humans after considering these toxicological studies and the exposure levels of humans to diruon.

The EPA also received an additional comment in support of this action.

## V. Conclusion

Upon completing review of the current diuron database, the Agency concluded that the tolerance expression proposed in the Notice of Filing should be changed to include metabolites hydrolyzable to 3,4-dichloroaniline (3,4-DCA). This determination is based on

the results of the reviewed plant and animal metabolism studies.

Currently, there are existing tolerances for residues of diuron on peppermint, hay at 2 ppm. The petitioner proposed tolerances be established on mint at 1.5 ppm. The EPA has determined that the preferred commodity terms are spearmint, tops and peppermint, tops and based on the residue field trial data the appropriate tolerance level for spearmint and peppermint should be 1.5 ppm. The EPA has also determined the preferred commodity terms should be cactus and fish - freshwater finfish, farm raised.

Therefore, these tolerances are established for combined residues of diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea and its metabolites convertible to 3,4-dichloroaniline on cactus at 0.05 ppm, spearmint, tops at 1.5 ppm, peppermint, tops at 1.5 ppm and fish - freshwater finfish, farm raised at 2.0 ppm.

## VI. 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 rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) 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 6, 2000) do not apply to this rule. In addition, This 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: May 31, 2007.

**Donald R. Stubbs,**

*Acting 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 180.106 is amended by redesignating the text in paragraph (a) as (a)(1); by adding paragraph (a)(2); and by adding text to paragraph (c) to read as follows:

### § 180.106 Diuron; tolerances for residues.

(a) (1) * * *

(2) Tolerances are established for the combined residues of the herbicide diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea and its metabolites convertible to 3,4-dichloroaniline, in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Fish - freshwater finfish, farm raised | 2.0 |
| Peppermint, tops | 1.5 |
| Spearmint, tops | 1.5 |

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with a regional registration as defined in § 180.1(n) are established for the combined residues of the herbicide diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea and its metabolites convertible to 3,4-dichloroaniline) in or on the raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Cactus | 0.05 |

* * * * *

[FR Doc. E7–11205 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–S

## AGENCY FOR INTERNATIONAL DEVELOPMENT

## 48 CFR Parts 719 and 752

**RIN 0412–AA58**

## Mentor-Protégé Program

**AGENCY:** U.S. Agency for International Development (USAID).

**ACTION:** Final Rule.

**SUMMARY:** The United States Agency for International Development (USAID) is issuing this final rule to amend its acquisition regulations to formally encourage USAID prime contractors to assist small business, including veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small socially and

economically disadvantaged business, and women-owned small business, in enhancing their capabilities to perform contracts and subcontracts for USAID and other Federal agencies. The program seeks to increase the base of small business eligible to perform USAID contracts and subcontracts. The program also seeks to foster long-term business relationships between USAID prime contractors and small business entities and to increase the overall number of small business entities that receive USAID contracts, and subcontract awards.

**DATES:** *Effective Date:* This rule will take effect July 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rockfeler P. Herisse, Ph.D., U.S. Agency for International Development, Attn. Mentor-Protégé Program, Office of Small and Disadvantaged Business Utilization, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7800, Telephone: 202–712–0064, and E-mail: *rherisse@usaid.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Resolution of Comments
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the Unfunded Mandates Reform Act of 1995

## I. Background

On November 22, 2006, the U.S. Agency for International Development (USAID) published a notice of proposed rulemaking (71 FR 67518), which proposed to develop a program that encouraged USAID prime contractors to assist small business, including veteran-owned small business, service-disabled small business, HUBZone, small socially and economically disadvantaged business, and women-owned small business in enhancing their capabilities to perform contracts and subcontracts for USAID and other Federal agencies. Comments on this proposed rule were extended to and closed on February 22, 2007 (71 FR 70939).

Successful Mentor-Protégé arrangements represent opportunities for creating access for small business to USAID contracts and awards let through negotiated procurements. USAID received comments on the proposed rule suggesting the Agency clarify the eligible participants in the Program and the types of incentives USAID may provide to prime contractors for providing developmental assistance to protégés. After careful consideration of the public comments received on the notice of proposed rulemaking, USAID today publishes a final rule.

## II. Resolution of Comments

Fourteen comments were received in response to the proposed rule. The comments and USAID's responses are as follows:

*Comment:* USAID's implementation of its Mentor-Protégé Program must be narrowly tailored within SBA's statutory and regulatory constraints, absent USAID-specific statutory authority.

*Response:* USAID agrees that its Mentor-Protégé Program must stay within SBA regulations and USAID-specific statutory authority.

USAID received two comments related to Minority Serving Institutions in the proposed rule.

*Comment 1 states:* We support the inclusion of Minority Serving Institutions (MSIs) as eligible protégés but recommend that the expanded description of MSIs in this (the Purpose) section be deleted since it is specifically covered as a definition in section 719.273–2(b) and in FAR 2.101–2.

*Comment 2 states:* We support the inclusion of Minority Serving Institutions (MSIs) as eligible mentors, but question USAID's authority to use MSIs as small business concern protégés.

*Response:* USAID intended to include MSIs in the scope of this program. However, doing so would be outside its statutory authority. USAID agrees that it does not currently have the statutory authority for this provision and has deleted this requirement from the Mentor-Protégé Program regulations. References to MSIs as mentors or protégés have been deleted from the final rule.

USAID received two comments related to the treatment of ''affiliation'' in the proposed rule.

*Comment 1 states:* We appreciate the affirmation included in this (Purpose) section that a protégé firm is not considered an affiliate of a mentor solely because of the developmental assistance the protégé receives under the Program but recommend that this statement be moved to section 719.273–2(a) where it more appropriately relates to the definition of a ''small business.''

*Comment 2 states:* We do not believe that [USAID] has the authority to waive the SBA's affiliation requirements, as set forth in 13 CFR 121.103.

*Response:* USAID does not intend to establish affiliate relationships or waive the SBA affiliation requirements, as doing so is not within the USAID statutory authority. The final rule is clarified in section 719.273–2.

*Comment:* We strongly support the formulation that a mentor may have more than one protégé providing that each relationship complies with the terms and conditions of the regulations and the mentor can demonstrate that it has the capacity to provide developmental assistance appropriate to the specific protégé. However, this language is already more appropriately addressed in sections 719.273–4(b) and 719.273–5(b) and thus should be deleted from this [Purpose] section.

*Response:* USAID agrees with this comment and has modified the final rule.

*Comment:* The commenter cites a portion of section 719.273–1 which concludes with a statement that USAID reserves the right ''to limit the total number of protégés participating'' in the Program. The Agency has not disclosed why it has an interest in establishing limits on participation in the program. It is also unclear whether this statement means that the Agency would limit the number of protégés a mentor could have or whether it is intended to operate as an overall limit of the number of mentor firms in the Program. For example, [Section] 719.273–5(b) states that USAID reserves the right to limit the number of protégés participating under each mentor firm * * * By contrast, in the Paperwork Reduction Act discussion in the Background section accompanying the rule the Agency ''estimates'' that there would be a total of thirty firms required to complete the application form. Regardless, we believe the issue of any Agency imposed limits, if there are to be any, is more appropriately addressed elsewhere in the substantive provisions of the rule.

*Response:* The commenter addresses several attributes of the Program, some of which are clarified in the final rule. USAID confirms its intent to reserve the right to limit the total number of participants in the Program, as expressed in section 719.273–4, in order to insure its effective management of the Program. The formulation in section 719.273–5(b) is clear in its intent to reserve the right to limit the number of protégés participating under each mentor under the Program, in order for USAID to effectively manage the Program, to conduct due diligence on all Mentor-Protégé Agreements, and to assure the developmental assistance proposed in the Agreements is being provided by the mentor to the protégé(s). The discussion on the Paperwork Reduction Act in the Background section is intended to

provide an estimate of the number of participants from the U.S. business community to participate in the Program and was not intended to set a predetermined limit on the number of participants in the Program. USAID will monitor the number of Agreements endorsed (participants accepted into the Program) and in effect between the firms within a given period of time. These Agreements will be entered by firms in the public domain outside the controls of the USAID, but USAID imposes these measures to potentially limit participation in the Program to assure the integrity of the Mentor-Protégé Program. USAID agrees to reflect this concern in the Internal Controls section 719.273–10(a)(4) of the final rule.

*Comment:* Addressing the definitions in section 719.273–2, commenter noted that the categories of firms eligible to participate in the Program are already covered in a more inclusive manner as a defined term in paragraph (a) of this Section and recommended deleting the listing in paragraph (e).

*Response:* USAID disagrees with this comment and believes that there is merit in listing the categories of small business firms in both the new introductory paragraph of the section and in the specific definition of a Protégé.

*Comment:* (Referring to the last sentence of undesignated first paragraph of section 719.273–4) We recognize that the goal of the Mentor-Protégé Program is to expand the opportunities for small businesses to participate in USAID procurements. However, based on the capabilities of the prospective protégé firm and the developmental assistance it may need, it may be unreasonable to expect a prospective mentor firm to include the prospective protégé in the subcontracts at the outset of an Agreement. We believe USAID intended the scope of opportunities for prospective firms to be as broad as possible and that the Agency did not intend to restrict prospective protégés to only those firms that are already qualified as potential prime contractors or as subcontractors under a mentor's prime contract * * *. We encourage USAID to clarify this important issue of eligibility in this paragraph.

*Response:* USAID does not expect nor will it require a prospective mentor firm to include the prospective protégé in the subcontracts at the onset of an Agreement. USAID has clarified this issue of eligibility in the final rule.

*Comment:* The commenter, citing the Federal Acquisition Regulation, states that USAID relies on 15 U.S.C. 637(d)(4)(E) for its authority to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract * * * [A]lthough USAID could provide certain evaluation preferences to mentors and protégés with an approved Agreement, [commenter did] not see how USAID can provide the subcontracting credit that is set forth in the proposed rule, noting that the Department of Defense needed specific statutory authority for their Mentor-Protégé Program to provide for subcontracting credits.

*Response:* USAID agrees that it currently does not have statutory authority to permit credit for subcontracting and has modified the final rule accordingly, to refine the language in 719.273–3(b). We are concerned about making the Program attractive to mentors and protégés through allowable incentives under its statutory authority. After reviewing incentives offered by other U.S. Government agencies and as permitted by our regulations, we revised this section, using the Environmental Protection Agency (EPA) program as a model. Under the same Small Business Act authority cited above, EPA has provided certain ''incentives'' for mentors, as codified in 48 CFR 1552.219–71(j); their regulation states that costs incurred by the offeror in fulfilling their agreement with a protégé firm are not reimbursable as a direct cost under the contract, but if EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates. In the final rule, USAID's ''incentive'' is similar to one provided by EPA.

*Comment:* When referencing a term such as ''small business,'' HUBZone, etc., USAID should be referring the reader to SBA's regulations rather than the FAR. The term as used in USAID's regulation should also be consistent with the term as defined in 13 CFR.

*Response:* USAID has modified the final rule accordingly.

We received two comments on section 719.273–4(b)(1)(ii). The first commenter noted that the section provides that the applicable NAICS code for determining small business status is the services or supplies to be provided by the Protégé to the mentor, but that ''the January 2006 application form prescribes that small business eligibility is based on the primary NAICS code for the small business concern. These two differing standards must be reconciled. We support the formulation used in the rule.'' The second commenter asked that USAID clarify that the protégé must be small for the NAICS codes assigned to the subcontract by the prime contractor (13 CFR 121.405).

*Response:* In the final rule, USAID indicates that the protégé must be small for the NAICS codes designated by the mentor, based on the supplies or services the protégé may provide to the mentor under a subcontract, in cases where there is a subcontract. USAID is not limiting protégé eligibility to only those small businesses that have a subcontract with the mentor, so we do not want the final rule to appear to make such a limitation. The comment about the application form is outside the scope of the proposed and this final rule.

*Comment:* The Summary of the proposed rule is not in agreement with the language in the proposed regulation and may be misleading.

*Response:* USAID agrees and has modified the rule to harmonize the summary and the language of the regulation.

*Comment:* The clause reference 752.219–270 should be 752.219–70.

*Response:* USAID agrees and deleted the number ''2'' from clause reference 752.219–70.

*Comment:* In section 719.273–4 Eligibility of Mentor and Protégé Firms (b)(2), please clarify that the applicable certifications must be in accordance with SBA's Program regulations contained in 13 CFR 124 and 126.

*Response:* USAID agrees and has modified the final rule accordingly.

## III. Procedural Requirements

### *A. Review Under Executive Order 12866*

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this final rule was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

### *B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) Write regulations to minimize litigation; and (3) Provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a),

section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the subject law's preemptive effect, if any; (2) Clearly specifies any effect on existing Federal law or regulation; (3) Provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) Specifies the retroactive effect, if any; (5) Adequately defines key terms; and (6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. USAID has completed the required review and determined that these proposed regulations meet the relevant standards of Executive Order 12988.

*C. Review Under the Regulatory Flexibility Act*

This final rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603 and 604) Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. In fact, the purpose of the USAID Mentor-Protégé Program is to increase small business accessibility to USAID contracting. This rule streamlines USAID internal operating procedures and will therefore not have a significant economic impact on small entities.

*D. Review Under the Paperwork Reduction Act*

This rule requires USAID Mentor-Protégé Program participants to submit an application (see section 719.273–7) and annual progress reports to the USAID Mentor-Protégé Program Manager at USAID Headquarters (see section 719.273–10). The information in the reports is necessary to determine the value of the developmental assistance and if the schedules and developmental assistance levels contained in Mentor-Protégé Agreements are being met. Performance under the Agreements is the basis for providing proper recognition to Mentor firms. USAID submitted the proposed collection of information to the Office of Management and Budget for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. The Office of Management and Budget has not yet approved the collection of information in this rule.

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 (5 CFR 1320.5(b)).

*E. Review Under Executive Order 12612*

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. States would not be directly subject to this rule, since they are not among the class of entities described as Mentors or Protégés. USAID has determined that this rule would not have a substantial direct effect on the institutional interests or traditional functions of the States.

*F. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This rulemaking would only affect private sector entities, and the impact is less than $100 million.

**List of Subjects in 48 CFR Part 719**

Government procurement.

■ For the reasons set out in the preamble, USAID amends 48 CFR Chapter 7 as set forth below:

## PART 719—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for part 719 is revised to read as follows:

**Authority:** 42 U.S.C. 7254, 40 U.S.C. 486(c), 42 U.S.C. 2201.

■ 2. A new subpart 719.273 is added as follows:

## Subpart 719.273—The U.S. Agency for International Development (USAID) Mentor-Protégé Program

Sec.

719.273 The U.S. Agency for International Development Mentor-Protégé Program.
719.273–1 Purpose.
719.273–2 Definitions.
719.273–3 Incentives for Prime Contractor Participation.
719.273–4 Eligibility of Mentor and Protégé Firms.
719.273–5 Selection of Protégé Firms.
719.273–6 Application Process.
719.273–7 OSDBU Review of Application.
719.273–8 Developmental Assistance.
719.273–9 Obligations Under the Mentor-Protégé Program.
719.273–10 Internal Controls.
719.273–11 Solicitation Provision and Contract Clause.

### 719.273 The United States Agency for International Development (USAID) Mentor-Protégé Program.

### 719.273–1 Purpose.

The USAID Mentor-Protégé Program is designed to assist small business, including veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small socially and economically disadvantaged business, and women-owned small business in enhancing their capabilities to perform contracts

and sub-contracts for USAID and other Federal agencies. The Mentor-Protégé Program is also designed to improve the performance of USAID contractors and subcontractors by providing developmental assistance to Protégé entities, fostering the establishment of long-term business relationships between small business and prime contractors, and increasing the overall number of small business that receive USAID contract and subcontract awards. A firm's status as a Protégé under a USAID contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts.

**719.273–2 Definitions.**

Throughout, the term ''small business'' includes all categories of small firms as defined by the Small Business Administration (SBA) on whose behalf the Office of Small and Disadvantaged Business Utilization (OSDBU) is chartered to advocate, including small business, small disadvantaged business, women-owned small business, veteran-owned and service-disabled veteran-owned small business and small business located in HUBZones, as those terms are defined in 13 CFR part 124. The determination of affiliation is a function of the SBA.

(a) A ''Mentor'' is a prime contractor that elects to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the Protégé.

(b) ''Program'' refers to the USAID Mentor-Protégé Program as described in this Chapter.

(c) ''Protégé'' means a small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business or service-disabled veteran owned small business that is the recipient of developmental assistance pursuant to a Mentor-Protégé Agreement.

**719.273–3 Incentives for Prime Contractor Participation.**

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), USAID is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. FAR 19.202–1 provides additional guidance.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in 719.273–8 to fulfill the terms of their agreement(s) with a Protégé firm(s), are not reimbursable as a direct cost under a USAID contract. If USAID is the mentor's responsible audit agency under FAR 42.703–1, USAID will consider these costs in determining indirect cost rates. If USAID is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to subparagraph (b) above, contracting officers may give Mentors evaluation credit under FAR 15.101–1 considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing Mentor-Protégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under FAR 15.305(a)(2)(v) and determining contractor responsibility 19.705–5(a)(1).

(d) OSDBU Mentoring Award. A non-monetary award will be presented annually to the Mentoring firm providing the most effective developmental support of a Protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).

(e) OSDBU Mentor-Protégé Annual Conference. At the conclusion of each year in the Mentor-Protégé Program, Mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on Program progress.

**719.273–4 Eligibility of Mentor and Protégé Firms.**

Eligible business entities approved as Mentors may enter into agreements (hereafter referred to as ''Mentor-Protégé Agreement'' or ''Agreement'' and explained in section 719.273–6) with eligible Protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of Protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as Mentors. Protégés may participate in the Program in pursuit of a prime contract or as subcontractors under the Mentor's prime contract with the USAID, but are not required to be a subcontractor to a USAID prime contractor or be a USAID prime contractor. Notwithstanding eligibility requirements in this section, USAID reserves the right to limit the number of participants in the Program in order to insure its effective management of the Mentor-Protégé Program.

(a) Eligibility. A Mentor:

(1) May be either a large or small business entity;

(2) Must be eligible for award of Government contracts;

(3) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and

(4) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) Eligibility. A Protégé:

(1) Must be a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small socially and economically disadvantaged business, and women-owned small business);

(2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

(3) Eligible for award of government contracts.

(c) Protégés may have multiple Mentors. Protégés participating in Mentor-Protégé programs in addition to USAID's Program should maintain a system for preparing separate reports of Mentoring activity so that results of the USAID Program can be reported separately from any other agency program.

(d) A Protégé firm shall self-certify to a Mentor firm that it meets the requirements set forth in paragraph (b) of this section and possess related certifications granted by the Small Business Administration (e.g., HUBZone, 8(a), etc.). Mentors may rely in good faith on written representations by potential Protégés that they meet the specified eligibility requirements. HUBZone and small disadvantaged business status eligibility and documentation requirements are determined according to 13 CFR part 124.

**719.273–5 Selection of Protégé Firms.**

(a) Mentor firms will be solely responsible for selecting Protégé firms. Mentors are encouraged to select from a broad base of small business including small disadvantaged business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business, and HUBZone firms whose core competencies support USAID's mission.

(b) Mentors may have multiple Protégés. However, to preserve the

integrity of the Program and assure the quality of developmental assistance provided to Protégés, USAID reserves the right to limit the total number of Protégés participating under each Mentor firm for the Mentor-Protégé Program.

(c) The selection of Protégé firms by Mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a Mentor shall be handled in accordance with the Federal Acquisition Regulation (FAR) and the Small Business Administration regulations.

**719.273–6 Application Process.**

Entities interested in becoming a Mentor firm must apply in writing to the USAID Office of Small and Disadvantaged Business Utilization (OSDBU) by submitting form AID 321–1 (OMB Control number 0412–0574 approved on 5/22/2007). The application shall contain the Mentor-Protégé Agreement and shall be evaluated for approval. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support. The Mentor-Protégé Agreement must contain:

(a) Names, addresses, phone numbers, and e-mail addresses (if available) of Mentor and Protégé firm(s) and a point of contact for both Mentor and Protégé;

(b) A description of the developmental assistance that will be provided by the Mentor to the Protégé, including a description of the work or product contracted for (if any), a schedule for providing assistance, and criteria for evaluation of the Protégé's developmental success;

(c) A listing of the number and types of subcontracts to be awarded to the Protégé;

(d) Duration of the Agreement, including rights and responsibilities of both parties (Mentor and Protégé);

(e) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the Mentor or the Protégé to notify the other firm in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(f) Procedures requiring the parties to notify OSDBU immediately upon receipt of termination notice from the other party;

(g) A plan for accomplishing the work or product contracted for should the Agreement be terminated; and

(h) Other terms and conditions, as appropriate.

**719.273–7 OSDBU Review of Application.**

(a) OSDBU will review the information to establish the Mentor and Protégé eligibility and to ensure that the information that is in section 719.273–6 is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. Application for and enrollment into the Program are free and open to the public.

(b) After OSDBU completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will provide a copy of the Mentor-Protégé Agreement to the USAID contracting officer for any USAID contracts affected by the Agreement.

(c) The Agreement defines the relationship between the Mentor and Protégé firms only. The Agreement itself does not create any privity of contract or contractual relationship between the Mentor and USAID nor the Protégé and USAID.

(d) If the application is disapproved, the Mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that USAID considers correctable, OSDBU will notify the Mentor and Protégé and request correction of deficiencies to be provided within 15 days.

**719.273–8 Developmental Assistance.**

The forms of developmental assistance a Mentor can provide to a Protégé include and are not limited to the following:

(a) Guidance relating to—

(1) Financial management;

(2) Organizational management;

(3) Overall business management/planning;

(4) Business development; and

(5) Technical assistance.

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(d) Property;

(e) Temporary assignment of personnel to a Protégé for training; and

(f) Any other types of permissible, mutually beneficial assistance.

**719.273–9 Obligations Under the Mentor-Protégé Program.**

(a) A Mentor or Protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract.

(b) Mentor and Protégé entities shall submit to the USAID Office of Small and Disadvantaged Business Utilization (OSDBU) annual reports on progress under the Mentor-Protégé Agreement. USAID will evaluate annual reports by considering the following:

(1) Specific actions taken by the Mentor during the evaluation period to increase the participation of their Protégé(s) as suppliers to the Federal Government and to commercial entities;

(2) Specific actions taken by the Mentor during the evaluation period to develop technical and administrative expertise of a Protégé as defined in the Agreement;

(3) The extent to which the Protégé has met the developmental objectives in the Agreement;

(4) The extent to which the Mentor's participation in the Mentor-Protégé Program impacted the Protégé'(s) ability to receive contract(s) and subcontract(s) from private firms and Federal agencies other than USAID; and, if deemed necessary;

(5) Input from the Protégé on the nature of the developmental assistance provided by the Mentor.

(c) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor(s)' performance in the Program.

(d) Mentor and Protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

**719.273–10 Internal Controls.**

(a) OSDBU will oversee the Program and will work in concert with the Mentor-Protégé Program Manager and relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances applicable to the Program. These controls will include:

(1) Reviewing and evaluating Mentor applications for validity of the provided information;

(2) Reviewing annual progress reports submitted by Mentors and Protégés on Protégé development to measure Protégé progress against the plan submitted in the approved Agreement;

(3) Reviewing and evaluating financial reports and invoices submitted

by the Mentor to verify that USAID is not charged by the Mentor for providing developmental assistance to the Protégé; and

(4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to insure the effective management of the Program.

(b) USAID may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in USAID's best interest. The rescission shall be in writing and sent to the Mentor and Protégé after approval by the Director of OSDBU. Rescission of an Agreement does not change the terms of any subcontract between the Mentor and the Protégé.

**719.273–11 Solicitation Provision and Contract Clause.**

(a) The Contracting Officer shall insert the provision at AIDAR 752.219–70 in all unrestricted solicitations exceeding $550,000 ($1,000,000 for construction) that offer subcontracting opportunities.

(b) The Contracting Officer shall insert the clause at AIDAR 752.219–71 in all contracts where the prime contractor has signed a Mentor-Protégé Agreement with USAID.

## PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 752.219–70 to read as follows:

**752.219–70 USAID Mentor-Protégé Program.**

As prescribed in 719.273–11(a), insert the following provision:

**USAID Mentor-Protégé Program (July 13, 2007)**

(a) Large and small business are encouraged to participate in the USAID Mentor-Protégé Program (the ''Program''). Mentor firms provide eligible small business Protégés with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small business capable of providing developmental assistance. Protégé firms are small business as defined in 13 CFR parts 121, 124, and 126.

(c) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that aids Protégés. The costs for developmental assistance are not chargeable to the contract.

(d) Firms interested in participating in the Program are encouraged to contact the USAID Mentor-Protégé Program Manager (202–712–1500) for more information.

(End of provision)

■ 4. Add section 752.219–271 to read as follows:

**752.219–71 Mentor Requirements and Evaluation.**

As prescribed in AIDAR 719.273–11(b), insert the following clause:

**Mentor Requirements and Evaluation (July 13, 2007)**

(a) Mentor and Protégé firms shall submit an evaluation of the overall experience in the Program to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the Mentor and Protégé will formally brief the USAID Mentor-Protégé Program Manager regarding Program accomplishments under their Mentor-Protégé Agreement.

(b) Mentor or Protégé shall notify OSDBU in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program.

(End of clause)

Dated: May 31, 2007.

**Robert K. Egge,**

*Acting Director, Office of Small and Disadvantaged Business Utilization (OSDBU).*

[FR Doc. E7–11093 Filed 6–11–07; 8:45 am]

BILLING CODE 6116–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### 48 CFR Part 9903

### Cost Accounting Standards Board (CAS); Applicability of Cost Accounting Standards Coverage

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Procurement Policy, Cost Accounting Standards (CAS) Board, has adopted, without change from the interim rule, a final rule revising the criteria applicable to United Kingdom (UK) contractors for filing a Disclosure Statement, Form No. CASB DS–1. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act.

**EFFECTIVE DATE:** June 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Laura Auletta, Manager, Cost Accounting Standards Board, 725 17th Street, NW., Room 9013, Washington, DC 20503 (telephone: 202–395–3256).

**SUPPLEMENTARY INFORMATION:**

### A. Background

On May 23, 2005, the Cost Accounting Standards Board published an interim rule with request for comment (70 FR 29457) for the purpose of revising the criteria applicable to United Kingdom (UK) contractors for filing a Disclosure Statement, Form No. CASB DS–1. The interim rule was adopted in order to comply with a specific request by the UK Ministry of Defence (MOD) to simplify the compliance process with CAS Board disclosure requirements for UK contractors.

Unlike certain other foreign contractors, UK contractors have been required to file a CASB DS–1 in accordance with CAS regulations. The MOD initially approached the Board with a request that UK contractors be permitted to use the corresponding UK form ''Questionnaire on Method of Allocation of Costs'' (QMAC), in lieu of the CASB DS–1. After a review of the content of the QMAC, the UK and U.S. representatives agreed that it did not have the same scope as the CASB DS–1. Therefore, it was agreed that to cover the gap in the coverage a ''Supplemental QMAC'' was needed.

Based upon the Board's approval of a Supplemental QMAC that is acceptable to the MOD, the MOD requested that the CAS Board allow UK contractors to submit their basic QMAC, together with the Supplemental QMAC, in lieu of the DS–1. At its meeting on February 23, 2005, the Board agreed to change the CAS requirements so that UK contractors with CAS-covered contracts may file the UK QMAC together with its Supplement in lieu of the CASB DS–1 required of U.S. contractors. In conjunction with this change, the Board also agreed to eliminate the specific paragraph addressing UK contractors at 9903.201–1(b)(12). As a result, UK contractors are subject to the requirements of 9903.201–1(b)(4), *i.e.*, contracts and subcontracts with UK contractors are exempt from CAS ''insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned.'' The May, 2005 interim rule reflected these Board approved revisions.

### B. Public Comments

The Board received one set of public comments in response to the Interim Rule.

*1. CAS Coverage for UK Contractors*

*Comment:* The commenter requested confirmation that the rule requires that UK contractors comply only with CAS 401 and 402.

*Response:* The language in the final rule requires that all UK contractors performing U.S. Government contracts and not otherwise exempt under 48 CFR

9903.201–1 will be required to comply only with CAS 401 and 402 in accordance with 48 CFR 9903.201–1(b)(4).

*2. Extent of Disclosure Requirement*

*Comment:* The commenter expressed concern that UK contractors are subject to more extensive disclosure requirements than other countries listed in 48 CFR 9903.201–4(e) by virtue of the QMAC Supplement.

*Response:* The Board believes that the disclosure requirements for UK contractors provide the information necessary for the UK MOD to determine whether such contractors are complying with the provisions of CAS 401 and 402. The MOD initially requested that its contractors be permitted to file only the QMAC. However, as described in the Background section above, the Board determined that the QMAC, by itself, did not provide sufficient information about the accounting practices of UK contractors. Therefore, working jointly with the MOD, the QMAC supplement was developed to minimize duplicate disclosures while providing the additional information needed to cover the gap between the QMAC and CASB DS–1.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

**D. Executive Order 12866 and the Regulatory Flexibility Act**

The Board certifies that this rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5. U.S.C. 601, *et seq.*, because small businesses are exempt from the application of the Cost Accounting Standards.

**List of Subjects in 48 CFR Part 9903**

Accounting, Government procurement.

**Paul A. Denett,**

*Administrator, Office of Federal Procurement Policy.*

■ For the reasons set forth in this preamble, Chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below. Please note that, in publishing the interim rule, the Code of Federal Regulations inadvertently removed and reserved paragraph (d) of the first *clause* under Section 9903.201–4 entitled ''Cost Accounting Standards (June 2000)'' instead of paragraph (d) of the *section.* This final rule corrects that error and, for clarity, restates the section in its entirety. Therefore, the interim final rule published at 70 FR 29457, May 23, 2005, is adopted as final with the following changes.

## PART 9903—CONTRACT COVERAGE

■ 1. The authority citation for part 9903 continues to read as follows:

**Authority:** Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

## Subpart 9903.2—CAS Program Requirements

■ 2. Section 9903.201–4 is revised to read as follows:

### 9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraph (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

**Cost Accounting Standards (June 2000)**

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclosed in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability of such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904 or a CAS rule or regulation in part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will

constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(b) [Reserved].

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (*see* 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

**Disclosure and Consistency of Cost Accounting Practices (June 2000)**

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract, as indicated in part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(d) [Reserved].

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

**Cost Accounting Standards—Educational Institutions (June 2000)**

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of part 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by

such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

[FR Doc. E7–11325 Filed 6–12–07; 8:45 am]

BILLING CODE 3110–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 070322065–7114–02; I.D. 030607C]**

**RIN 0648–AV39**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 13

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to permanently re-activate the industry-funded observer program in the Scallop FMP through a scallop total allowable catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners defray the cost of carrying observers. The following observer program management measures are implemented by this rule: Requirements for becoming an approved observer service provider; observer certification and decertification criteria; and notification requirements for vessel owners and/or operators. This action also requires scallop vessel owners, operators, or vessel managers to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. Additionally, this action allows adjustments to the observer program to be done through framework action.

**DATES:** Effective June 12, 2007.

**ADDRESSES:** Copies of Amendment 13, the public hearing document, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.* Amendment 13 is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the internet at *http://www.nero.nmfs.gov.*

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, phone 978–281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

The Council adopted Amendment 13 to the Scallop FMP on February 7, 2007, and submitted it to NMFS on February 16, 2007, for review and approval. The Council developed Amendment 13 to permanently re-active the industry-funded scallop observer program implemented by NMFS via emergency

rule in 2006. Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish, including yellowtail flounder, skates, monkfish, cod, and other species. Monitoring of yellowtail flounder bycatch in the Scallop Access Areas within the year-round closed areas under the Northeast (NE) Multispecies FMP is of particular concern because the scallop fishery is constrained by a fishery-specific TAC of yellowtail flounder, an overfished species, which is part of the stock-wide yellowtail flounder TACs set by the NE Multispecies FMP to achieve specified mortality targets for the species. Observer coverage is also needed to monitor interactions of the scallop fishery with endangered and threatened sea turtles. A proposed rule for Amendment 13 was published on April 6, 2007 (72 FR 17076). The public comment period for the proposed rule ended on May 7, 2007. The notice of availability for the amendment published on March 19, 2007, and its required 60-day comment period closed on May 18, 2007. This rule implements management measures associated with the scallop observer program, which are described in detail below.

**Approved Management Measures**

In the proposed rule, NMFS requested comments on all proposed management measures. The approved management measures are discussed below; no measures in Amendment 13 were disapproved. Details concerning the development of these measures were presented in the preamble of the proposed rule and are not repeated here.

*Observer Service Provider Requirements*

Amendment 13 allows any entity to become an observer service provider if it meets the approval and responsibilities criteria. Potential observer service providers are required to submit an application containing detailed information such as contact information, description of past experience with placing individuals in remote field and/or marine environments, evidence of adequate insurance to cover injury, liability and accidental death for observers during employment, and proof of compensation for observers while employed that meet or exceed Department of Labor guidelines. Entities interested in being included on the list of NMFS-approved observer service providers are required to submit an application with the information described in the regulatory text of this action. Upon receipt of an application, NMFS will provide all potential observer service providers with an estimated number of observer sea days for the fishing year. Additionally, a planned schedule of observer deployments will be posted on this NOAA Web site: *http://www.nefsc.noaa.gov/femad/fsb/*. NMFS will notify candidate observer service providers of their approval or disapproval within 15 days of its receipt of their applications. If approved, the observer service provider's name will be added to the list of NMFS-approved observer service providers.

Observer service providers will be required to comply with all observer support, deployment logistics and limitations, communication, training, reporting, and conflict of interest requirements in the regulatory text of this action. Observer service providers will also be responsible for setting the daily cost of observer coverage on a vessel. NMFS will continue to be responsible for determining the reduced DAS accrual rate and TAC for the set-aside program to defray the cost of observer coverage through biennial specifications. This NMFS-approval process will maintain quality control of the data collected, but will not have potential conflicts with augmentation of appropriations law and policy.

Amendment 13 implements a few minor changes from the observer service provider requirements implemented by NMFS in 2006 via emergency rule. The cost of training/certifying scallop observers is borne by NMFS. To facilitate cost-effective training/certification, Amendment 13 requires a minimum class size of eight observers, which may be split among multiple observer service providers, to be enrolled in the scallop observer training class operated by the Northeast Fisheries Observer Program (NEFOP). Training classes with fewer than eight participants will be delayed until at least eight participants are enrolled. Amendment 13 also requires that an approved observer service provider maintain in its employ at least eight observers that had been certified through the scallop observer training class operated by NEFOP. The emergency rule required that an observer's first deployment shall be on a Scallop Access Area trip and that the resulting data be edited and approved by NMFS prior to any further deployments. Specifying details of new observer's first deployment was designed to provide the necessary oversight to ensure the collection of timely and accurate data. However, NEFOP has learned that requiring an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is sufficient for quality control, and that requiring an observer's first deployment be on a Scallop Access Area trip may limit the availability of observers to provide coverage on scallop trips to open areas. Therefore, the requirement that an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is implemented in this action, but the requirement that an observer's first deployment shall be on a Scallop Access Area trip is not.

*Observer Certification Requirements*

Amendment 13 requires that employees of observer service providers must meet the NMFS National Minimum Eligibility Standards available at *http://www.st.nmfs.gov/st4/nop/* and must pass the NEFOP training course and be physically and mentally capable of carrying out the responsibilities of an observer. NMFS has the authority to review observer certification and issue observer certification probation and/or decertification if warranted. One minor addition to the observer certification requirements implemented by emergency rule is that Amendment 13 requires that all observers hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certificate.

*Removal/Decertification Requirements*

Amendment 13 specifies criteria and protocols for removal of an observer service provider from the list of NMFS-approved observer service providers and the probation and decertification of an observer.

*Vessel Requirements*

Amendment 13 specifies general requirements for scallop vessels, notification procedures, and requirements of the vessel if it is selected to carry an observer. Vessels are responsible for paying the cost of an observer, regardless of whether the vessel lands or sells scallops on that trip, and regardless of the availability of set-aside TAC or reduced DAS accrual rate.

The emergency rule required that vessels contact NMFS prior to the 25th day of the month preceding the month in which it intends to fish. This requirement was designed by NMFS to provide NEFOP with an estimate of fishing effort to expect in the following month, so that observer coverage needs could be met. However, NEFOP has found that it does not need this provision to meet coverage needs; therefore, that notification requirement is not implemented in Amendment 13.

*Future Adjustments to the Observer Program*

Lastly, Amendment 13 provides for a framework mechanism to implement future adjustments to the scallop observer program. Under the Scallop FMP, and in accordance with the Administrative Procedure Act, the framework process allows for rulemaking to amend observer requirements without the need to also amend the FMP. Currently, adjustments to the observer program must be made through an amendment to the Scallop FMP. Providing for a framework mechanism in the Scallop FMP to make adjustments to measures implemented for the observer program will allow the Council more flexibility to develop improvements to the observer program.

**Comments and Responses**

NMFS received two comment letters on Amendment 13.

*Comment 1:* The first comment expressed concern about the lack of Federal support for observer coverage of the scallop fishery. The commenter stated that the Scallop FMP requirement that industry pay for observer coverage was intended to provide observer coverage for trips into Scallop Access Areas, but not observer coverage on trips into open areas. The commenter acknowledged that the Scallop FMP's set-aside program generally does have a positive economic effect. However, the commenter cautioned that using the set-aside to pay for observer coverage may become burdensome for the industry if the abundance or price of scallops declines, especially for observer coverage in open areas. Instead, the commenter proposed that NMFS use Federal funds to pay for observer coverage in open area trips, to the extent that such funding is available.

*Response:* The Scallop FMP requirement for industry to pay for observer coverage and the level of set-aside available to help defray the cost of observer coverage are not addressed in Amendment 13. However, they were established after being considered in prior scallop actions, particularly Amendment 10, the action that established the current set-aside program in July 2004. Amendment 13 only establishes the mechanism to allow the set-aside to be used; it does not adjust the set-aside program. If this action is implemented, future adjustments to the set-aside program, including adjustments evaluating the commenter's concerns, could be implemented by framework action.

*Comment 2:* The second comment cautioned that a conflict of interest can result from industry-funded observer programs, leading to inaccurate and biased data. The commenter proposed camera surveillance as a better means to collect data.

*Response:* NMFS concurs with the commenter that conflict of interest is an important issue to consider when developing an industry-funded observer program. Therefore, to minimize the likelihood that an observer would develop ties to a vessel owner/operator and/or feel pressured by a vessel owner/operator to misreport, Amendment 13 prohibits observer service providers from consecutively deploying the same observer on the same vessel and from deploying an observer on the same vessel more than twice a month. The Council did not consider electronic monitoring for the scallop fishery in Amendment 13, but as technology develops, electronic monitoring may be considered in a future action.

**Changes From the Proposed Rule**

In § 648.14, paragraph (h)(17) is revised to include the correct cross-reference.

In § 648.14, paragraph (i)(15) is added to clarify the prohibition to be consistent with paragraph (h)(17).

**Classification**

The Administrator, Northeast Region, NMFS, determined that FMP Amendment 13 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

NMFS approved Amendment 13 on May XX, 2007. A copy of the Amendment is available from the Council and NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for Amendment 13. Because Amendment 13 maintains a mechanism for an industry-funded observer program that has been in place since last year, delaying the effective date of Amendment 13 would be more disruptive and would cause more economic and resource conservation concerns than waiving the delay in effective date.

Amendment 13 permanently implements, with minor modifications, the industry-funded scallop observer program implemented by NMFS through an emergency rule in 2006. Observer coverage in the scallop fishery is necessary to monitor groundfish bycatch, particularly yellowtail flounder bycatch in the Scallop Access Areas. It is also needed to monitor interactions between the scallop fishery and sea turtles, especially in the Mid-Atlantic during June through October. The emergency rule that implemented the industry-funded scallop observer program in 2006 expires on June 11, 2007, and the Scallop Access Areas open on June 15, 2007.

To prepare for the opening of the Scallop Access Areas, NMFS recently completed a three-week training course for 20 observers for the industry-funded scallop program. The cost of this training was approximately $112,640 (approximately $5,632 per observer) and included lodging, meals, travel, salary, leasing training vessels, safety training, and security clearances. If there is a delay in effective date of Amendment 13 and these observers are not able to work, they will likely move on to other jobs and additional observers would need to be found and trained. Because trained observers are valuable and difficult to replace, it would take a minimum of three months to locate and train additional observers. Additionally, there would be a loss of income, potentially severe, for observer service providers who employ industry-funded observers for the scallop fishery, if there is a delay in effective date in Amendment 13 resulting in a lapse of an industry-funded observer program.

NMFS's current and anticipated funding only provides for minimal observer coverage in the scallop fishery. Delaying the implementation of Amendment 13, and its provision for an industry-funded observer coverage in the scallop fishery, would likely result in less than sufficient observer coverage levels for monitoring the yellowtail flounder bycatch in Scallop Access Areas when they open on June 15, 2007. Scallop Access Areas have restrictive yellowtail flounder bycatch TACs that require close monitoring to achieve specified mortality targets. Observer data are used to calculate yellowtail flounder catch rates in these areas and catch rates are extrapolated to unobserved trips. Observer coverage is essential in order to project TAC attainment and close the Scallop Access Areas. Closing Scallop Access Areas after the yellowtail flounder bycatch TACs for Scallop Access Areas are exceeded could result in exceeding mortality targets for an overfished stock, thereby slowing rebuilding of an overfished stock, and potentially conflicting with requirements of National Standard 1 of the Magnuson-Stevens Act to rebuild overfished stocks within a specified time period.

Additionally, observer coverage to monitor interactions between the scallop fishery and sea turtles is particularly important during June through October. Sea turtles are known to occur in areas where the scallop fishery operates during this period and sea turtle takes in scallop trawl and dredge gear have been observed during these months. Delaying the implementation of Amendment 13 would also likely result in less than sufficient observer coverage to document interactions between the scallop fishery and sea turtles in June, and perhaps July. Even though compliance with the Endangered Species Act (ESA) does not require observer coverage in the Mid-Atlantic scallop fishery because of mandatory gear modifications, observer coverage of the scallop fishery continues to provide important information to advance knowledge of how, where, and to what extent ESA-listed sea turtles interact with dredge and trawl gear used in the scallop fishery.

Lastly, the management effects of having minimal observer coverage in the scallop fishery during June, and possibly July could result in negative economic impacts on the scallop industry for the 2007 fishing year. Scallop harvest from Scallop Access Areas is a substantial source of income for the scallop fleet. Should these areas close earlier than necessary because of less reliable data on yellowtail flounder bycatch, the fleet would experience reduced fishing opportunities and reduced harvest.

For these reasons, there is good cause to waive the 30-day delay in effectiveness for Amendment 13. The need for this waiver is due to the timing of the amendment's submission by the Council to NMFS. Amendment 13 was adopted by the Council on February 7, 2007, and was submitted to NMFS for review and approval on February 16, 2007. The notice of availability for the amendment published on March 19, 2007, and its required 60-day comment period closed on May 18, 2007. The proposed rule for Amendment 13 published on April 6, 2007, and its 30-day comment period closed on May 7, 2007.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comment in response to the IRFA, NMFS responses to those comments, and the corresponding economic analyses prepared for Amendment 13. The contents of these incorporated documents are not repeated in detail here. A copy of Amendment 13 and the IRFA are available upon request (see **ADDRESSES**).

*Statement of Need for This Action*

The objective of this action is to re-activate the industry-funded observer program for the scallop fishery. Observer coverage is necessary in the scallop fishery to monitor bycatch of finfish and interactions with endangered and threatened species. The need for this action is to provide a mechanism to approve observer service providers so that the set-aside program can be utilized to help defray costs of carrying the necessary level of observers in the scallop fishery. A complete description of the reasons why this action is being implemented, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule (72 FR 17076, April 6, 2007) and is not repeated here.

*A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

As discussed in the preamble, an industry representative commented that the Scallop FMP requirement for industry to pay for observer coverage was intended to provide observer coverage for trips into Scallop Access Areas, but not observer coverage on trips into open areas. The commenter acknowledged that the Scallop FMP's set-aside program generally does have a positive economic effect. However, the commenter cautioned that using the set-aside to pay for observer coverage may become burdensome for the industry if the abundance or price of scallops declines, especially for observer coverage in open areas. The Scallop FMP requirement for industry to pay for observer coverage and the level of set-aside available to help defray the cost of observer coverage are not addressed in Amendment 13. However, they were considered in prior scallop actions, particularly Amendment 10, the action that established the current set-aside program in July 2004. Amendment 13 only implements administrative tools to allow the set-aside to be used; it does not adjust the set-aside program. If this action is implemented, future adjustments to the set-aside program, including adjustments evaluating the commenter's concerns, could be implemented by framework action. No changes to the proposed rule were made as a result of this comment.

*Description of Small Entities to Which This Action Will Apply*

The vessels in the scallop fishery could all be considered small business entities because all of them grossed less than $4 million, according to the dealer data, for 2004 to 2006. This action will affect vessels with limited access and general category scallop permits. According to the recent permit data, there were 318 vessels that obtained full-time limited access permits in 2006, including 55 small-dredge and 14 scallop trawl permits. In the same year, there were also 32 part-time and 1 occasional limited access permit in the scallop fishery. In addition, 2,501 permits were issued to vessels in the open access general category and over 500 of these vessels landed scallops during the last 2 years. These numbers could change as the fishing year progresses. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

*Description of Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This final rule maintains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), previously approved under control number 0648–0546 in conjunction with the emergency action.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

Approved Action

Previous scallop regulatory actions established provisions that impose some cost on vessels that participate in the scallop fishery by requiring vessels to carry and pay for observers on some trips. Compliance costs associated with the observer coverage can be minimized through the set-aside (*i.e.*, TAC and DAS, depending on fishing area) that will provide compensation to vessel owners that have paid for observers.

This action re-activates the mechanism that allows vessels to offset the costs of observer coverage and harvesting additional scallops from the set-aside. The net impacts of the observer program on vessels that participate in the scallop fishery will depend on scallop prices, trip costs, observer costs, and the TAC or reduced DAS accrual rate provided by NMFS. The analyses presented in Amendment 13 showed that, in some circumstances, observer coverage could reduce crew and vessel income by extending the trip and increasing the trip costs, especially for vessels with a lower catch rate per DAS. But in most cases, overall costs due to the observer coverage will be minimized, and may even yield positive economic benefits, due to the compensation that would be provided by NMFS.

The average total revenue for a general category vessel was $139,755 for the first 11 months of the 2006 fishing year, $249,167 for fishing year 2005, and $260,942 for fishing year 2004. Assuming that the cost of an observer would be $800 per day-at-sea (or $33.30 per hour, slightly higher than the $775 paid by vessels during the 2006 fishing year), average observer costs per general category vessel were estimated to be about $1,440 per trip in 2006. A cost of $1,400 per vessel for the year, assuming that each vessel carries an observer on only one trip, would amount to about 1 percent of total revenue. Similarly, the average total revenue of a limited access vessel was $803,873 for the first 11 months of the 2006 fishing year, $1,072,991 for fishing year 2005, and $988,401 for fishing year 2004. Average observer costs per limited access vessel were $6,560 per trip in 2006. Again, assuming that each vessel carries an observer on only one trip, observer cost would amount to less than 1 percent of the total revenue. (These are the amounts paid to the observer provider and do not include compensation through TAC or DAS set-asides.) Because of the set-aside, compliance costs to scallop vessels are expected to be considerably less than these amounts, under most circumstances. However, as described previously, if there is no set-aside, or no remaining set-aside, to help pay for the observer coverage, the vessels would be responsible for paying the observer, regardless of whether the vessel lands or sells scallops on that trip. This has been the process since the set-aside program was implemented in 1999, but NMFS usually distributes the set-aside such that the majority, if not all trips with an observer aboard, are at least partially compensated.

Economic impacts on scallop vessels, under several scenarios for both limited access and general category vessels, were analyzed in the IRFA for Amendment 13. Scenarios are based on set variables (*i.e.,* trip costs, cost of observer, and the compensation (either TAC or DAS) provided by NMFS for carrying an observer) and fluctuating variables (*i.e.,* landings per unit effort, price of scallops). While TAC compensation is provided by NMFS, vessels must incur additional costs to harvest the compensation TAC. Economic impacts on vessels in the scallop fleet are analyzed in the IRFA by considering set variables, fluctuating variables, and whether or not a vessel carries an observer for a trip. Although the IRFA in Amendment 13 analyzes several scenarios, the results are summarized as follows:

For limited access vessels, fluctuating variables in the assumptions include: Landings per unit effort (LPUE) ranging from 1,800 lb (816.5 kg) per DAS to 800 lb (362.9 kg) per DAS and scallop price ranging from $7.60 per lb to $6.00 per lb. Given the highest LPUE and highest price, a vessel's income could be expected to increase by about $9,280 with an observer onboard (from $61,560 without an observer, to $70,840 with an observer). A vessel's crew income could be expected to increase by about $10,722 with an observer (from $63,540 without an observer, to $72,282 with an observer). The increase in income when carrying an observer is due to the compensation for carrying an observer, either additional pounds (400 lb (181.4 kg) per day) or DAS (0.15 reduced accrual rate in open areas). With an LPUE of 800 lb (362.9 kg) per DAS and a price of $7.60 per lb, a vessel's income could be expected to decline by about $32 with an observer onboard (from $24,624 without an observer to $24,592 with an observer). A vessel's crew income could be expected to decline by about $1,619 with an observer (from $19,566 without an observer, to $17,947 with an observer). These decreases in income result from extended trip lengths to catch the additional pounds to pay for an observer.

General category vessels are subject to the industry-funded observer provisions only when fishing in Scallop Access Areas and are compensated with additional pounds per trip. With a compensation of 400 lb (181.4 kg) per day, a vessel would cover observer costs of $1,600 by fishing 2 days and landing 1,200 lb (544.3 kg) of scallops (400 lb (181.4 kg) for the trip and 800 lb (362.9 kg) as compensation). At a price of $6.00 per lb, the vessel would generate $7,200 revenue from scallops, and would increase total crew income by $1,410 and vessel income by $1,440. At a scallop price of $7.60 per lb, vessels and crews could be expected to increase revenues even at a lower compensation rate. By fishing more days, a vessel could experience even more gains in revenue. For example, by fishing 3.5 days and receiving 1,600 lb (725.7 kg) in compensation, total scallop revenue could increase to $15,200 at a price of $7.60 per lb, increasing both crew and vessel income by over $4,000. These positive impacts on vessels are due to the fact that general category vessels are not allowed to land more than 400 lb (181.4 kg) on regular trips and, even at a price of $6.00 per lb, a compensation amount of 400 lb (181.4 kg) could bring $2,400 in revenue, exceeding the cost of the observer and trip costs. However, if compensation pounds were set too low, or if prices decline below $6.00 per lb, the economic gains from compensation for carrying an observer could decline.

Observer coverage would improve information that could be used to reduce the amount of finfish bycatch and the level of sea turtle takes in the scallop fishery. This could eliminate the need for more conservative management measures in the future that may potentially have adverse impacts on the scallop industry. For these reasons and the reasons described above, the benefits of the observer program are expected to exceed costs of this program and have positive economic impacts on vessels participating in the scallop fishery.

The mechanism to allow adjustment of the observer program through framework action could be used to reduce the differential impacts of this program on some vessels, such as by implementing different TAC amounts and DAS accrual rates for smaller vessels. The adjustments through framework could also provide more flexibility to the program in determining the amount of set-aside or the way the observer costs are shared among the vessels in the scallop fleet.

Participation by potential observer service providers is voluntary and, since no Federal action is requiring participation, further assessment of the potential impacts on these entities is not required. No significant quantifiable impacts on scallop prices and change in benefits to the consumers are expected from this action, since the observer program is not expected to impact scallop landings in a significant way.

Non-Selected Alternatives

This action permanently re-activates the industry-funded observer program in the Scallop FMP through a set-aside

program that helps vessel owners defray the cost of carrying observers. The alternatives to this action do not provide for an industry-funded observer program. Under the no action alternative, the emergency rule would expire and no regulations would be implemented allowing for funding in addition to that provided by NMFS under its existing observer program. However, as discussed previously, NMFS's current and anticipated funding would only provide for minimal observer coverage in the scallop fishery. Therefore, under the no action alternative, observer coverage levels would likely be less than sufficient for monitoring the yellowtail flounder bycatch TAC in Scallop Access Areas and interactions between the scallop fishery and sea turtles in the Mid-Atlantic during June through October. Due to implications of having minimal observer coverage (*e.g.*, earlier closures based on less reliable bycatch estimates), no action would likely result in negative economic impacts (*e.g.*, reduced fishing opportunity, reduced harvest) for the scallop industry in both the short and long-term. Without an industry-funded observer program, adequate observer coverage for the scallop fishery could only occur if provided wholly by NMFS. However, because of resource constraints, it is not realistically possible for NMFS to wholly fund an adequate level of observer coverage for the scallop fishery.

The set-aside program is already an established provision in the scallop regulations and the measures in this final rule only establish a mechanism to enable the set-asides to be utilized by the industry as compensation for having paid for observer coverage. Measures to modify and improve the set-aside program are outside the scope of Amendment 13. During the Council's public hearing on Amendment 13 and public comment on the proposed rule, the scallop industry expressed concern that the proposed action would not provide a complete solution to the economic impacts associated with having to pay for observers under the existing set-aside program. The scallop industry also acknowledged that there were no other alternatives, besides the proposed and no action alternatives, that could be considered in Amendment 13. Based on this public input, this action also establishes a mechanism to allow future modifications to the observer program to be implemented by framework action. Providing for a framework mechanism in the Scallop FMP to make adjustments to the observer program would allow more flexibility to address industry's concerns with the program. Because of the administrative nature of this action, there were no other reasonable alternatives.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator, Northeast Region (see **ADDRESSES**).

This final rule maintains collection-of-information requirements subject to the PRA, previously approved under control number 0648–0546 in conjunction with the emergency action. These requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider—10 hr per response;
2. Applicant response to denial of application for approval of observer service provider—10 hr per response;
3. Observer service provider request for observer training—30 min per response;
4. Observer deployment report—10 min per response;
5. Observer availability report—10 min per response;
6. Safety refusal report—30 min per response;
7. Submission of raw observer data—5 min per response;
8. Observer debriefing—2 hr per response;
9. Biological samples—5 min per response;
10. Rebuttal of pending removal from list of approved observer service providers—8 hr per response;
11. Vessel request to observer service provider for procurement of a certified observer—25 min per response; and
12. Vessel request for waiver of observer coverage requirement—5 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 8, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.10, paragraph (b)(4) is revised to read as follows:

### § 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(4) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

■ 3. In § 648.11, paragraph (a) is revised, and paragraphs (g), (h), and (i) are added to read as follows:

**§ 648.11 At-sea sampler/observer coverage.**

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry an NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (g) of this section.

(1) For the purpose of deploying at-sea observers, sea scallop vessel owners are required to notify NMFS of scallop trips as specified in paragraph (g) of this section. Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit, or reduced accrual rate of DAS.

(2) [Reserved]

* * * * *

(g) *Atlantic sea scallop observer program*—(1) *General*. Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures*. For the purpose of determining if an observer will be deployed on a vessel for a specific trip, the owner, operator, or manager of a vessel issued a limited access permit fishing in open areas or in the Sea Scallop Access Area program specified in § 648.60, or the owner, operator, or manager of a vessel issued a general category scallop permit and fishing in the Sea Scallop Access Area program specified in § 648.60, is required to comply with the following notification requirement. For each scallop trip, the vessel owner, operator, and/or manager shall notify NMFS by telephone, using the phone number provided by the Regional Administrator in the Small Entity Compliance Guide, and provide the following information: Vessel name and permit number; contact name and number; date and time of departure; port of departure; area to be fished (either open areas or the specific Sea Scallop Access Area); and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(3) *Selection of scallop fishing trips for observer coverage*. Based on predetermined coverage levels for various sectors of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver.

(4) *Procurement of observer services by scallop vessels*. (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the Northeast Fisheries Observer Program (hereinafter NMFS/NEFOP certified) from an observer service provider approved by NMFS under paragraph (h) of this section. A list of approved observer service providers shall be posted on the NOAA/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/*. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 72-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 72 hr of the advance notification to the provider due to the unavailability of an observer, may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners, operators, and/or managers of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area trips or additional scallop catch per day in access areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60. Observer service providers are responsible for setting the daily rate for observer coverage on a vessel. NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in an access area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified by Small Entity Compliance Guide of any DAS accrual rate and additional pounds of scallops determined by the Regional Administrator. The Regional Administrator may adjust the DAS accrual rate and additional pounds of scallops, if necessary, based on economic conditions of the scallop fishery. Vessel owners and observer providers shall be notified of any such adjustments through a letter.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS's Web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) *Contents of application.* An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers (with resumes) on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals; which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will not be processed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS's Web site specified in paragraph (g)(4) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to their participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list as an approved observer service provider.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An approved observer service provider must maintain in its employ a minimum of eight NMFS/NEFOP certified observers in order to remain approved. Should a service provider's employed NMFS/NEFOP certified observers drop below eight, the provider must supply the appropriate number of candidates to the next available training class. Failure to do so shall be cause for suspension

of the provider's approved status, until rectified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS's Web site specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports*—(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip for which the deployment of an observer has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal, or failure to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS's discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. An observer that is at sea during the 2-week period must contact NMFS upon his or her return, if requested to do so by NMFS.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5:00 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(viii) *Refusal to deploy an observer.*—(A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels, other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be

substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers may not prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program Web site: *http://www.st.nmfs.gov/st4/nop/.*

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the Web site at: *http://www.nefsc.noaa.gov/femad/fsb/.*

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to the observer containing the decertification and to the approved observer service provider via certified mail at their most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

■ 4. In § 648.14, paragraph (h)(17) is revised and (i)(15) is added to read as follows:

**§ 648.14 Prohibitions.**

* * * * *

(h) * * *

(17) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

* * * * *

(i) * * *

(15) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

* * * * *

■ 5. In § 648.51, paragraphs (c)(4) and (e)(3)(iii) are added to read as follows:

**§ 648.51 Gear and crew restrictions.**

* * * * *

(c) * * *

(4) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

(e) * * *

(3) * * *

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

■ 6. In § 648.55, paragraph (e)(31) is revised, and paragraph (e)(32) is added to read as follows:

* * * * *

**§ 648.55 Framework adjustments to management measures.**

(e) * * *

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

(32) Any other management measures currently included in the FMP.

* * * * *

■ 7. In § 648.60, paragraph (a)(2) is revised to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) * * *

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

* * * * *

[FR Doc. 07–2928 Filed 6–8–07; 2:52 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 070213033–7033–01]**

**RIN 0648–XA75**

### Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2007, through 1200 hrs, A.l.t., July 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been reached. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 7, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 7, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–2927 Filed 6–8–07; 2:52 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 070209029–7118–02; I.D. 112906A]**

**RIN 0648–AU58**

### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to avoid expiration of these regulations on December 31, 2007, and ensure uninterrupted observer coverage in North Pacific groundfish fisheries. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

**DATES:** Effective on July 13, 2007.

**ADDRESSES:** Copies of the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska

Region website at *http://www.fakr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson, 907–586–7228, or *jason.anderson@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) in the Exclusive Economic Zone (EEZ) under the FMPs. The North Pacific Fishery Management Council (Council) has prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

High quality observer data are a cornerstone of Alaska groundfish fisheries management. However, the quality and utility of observer data suffer due to the current structure of procuring and deploying observers. Under the current program, coverage levels vary with the size of the vessel or the quantity of fish processed. Vessel owners and operators choose when and where to carry observers, and fishery managers do not control when and where observers are deployed. To address these concerns, the Council directed NMFS to develop an alternate program structure. Since the early 1990s, the Council and NMFS have explored alternative program structures as part of three separate actions. However, the Council identified problems with each of these actions and none were adopted. While the Council was developing and considering options for an alternate program structure, the Council recommended, and the Secretary approved, several extensions of the Observer Program regulations. A thorough discussion of the need for, and history of, the Observer Program, including past efforts to restructure and extend the Observer Program, is provided in the proposed rule (72 FR 7948, February 22, 2007) and EA/RIR/FRFA prepared for this action (see **ADDRESSES**), and is not repeated here.

In October 2002, the Council tasked its observer advisory committee (OAC) to develop a problem statement and alternatives for restructuring the Observer Program. In April 2003, the Council adopted a suite of alternatives that contemplated restructuring the Observer Program in a stepwise approach, beginning in the GOA. However, as NMFS began evaluating these alternatives, it became apparent that certain operational and data quality issues would be difficult to resolve in a revised program under which NMFS contracted directly with observers for observer services in the GOA, but retained the current system for procuring observer services in the BSAI.

From December 2003 through June 2005, the Council refined the suite of alternatives, and in June 2005 adopted the alternatives for analysis. These alternatives include options to restructure the Observer Program for all groundfish and halibut vessels fishing in the GOA only, for halibut vessels and certain sectors fishing in both the GOA and BSAI, and for all groundfish and halibut fisheries. Shoreside and stationary floating processors were included under each alternative depending on their location and management program. In addition to the ''no-action'' alternative under which the Observer Program would expire, the Council also asked staff to analyze an alternative that would remove the December 31, 2007, expiration date and continue current observer coverage regulations without an expiration date.

While the Council intended to adopt a preferred alternative by January 1, 2008, several issues arose during the course of analysis of the alternatives that has made this difficult. First, due to uncertainty about the applicability of overtime pay provisions of the Fair Labor Standards Act to contracted observers, staff were unable to adequately estimate observer costs under any of the restructuring alternatives. Second, the Research Plan authority to assess a fee for observer coverage could not be exclusively applied to a subset of the North Pacific groundfish fisheries vessels. Therefore, all the action alternatives except Alternative 2 (extension of the current program) required new statutory authorization for fee collection from a portion of the fleet or to implement different fee mechanisms for different sectors, as were considered in the analysis.

Because observer costs could not be adequately estimated and the uncertainty that Congress would authorize fee collection, NMFS recommended that the Council adopt Alternative 2 as its preferred alternative. The Council concurred and adopted Alternative 2 at its February 2006 meeting. The Council also amended the problem statement to reflect that, while Alternative 2 does not address most of the issues in the problem statement, it ensures Observer Program viability, and the continued collection of information necessary to manage the North Pacific fisheries. While the costs of the restructuring alternatives cannot be adequately estimated at this time, the analysis prepared for this action includes restructuring alternatives to provide context to the Council's adoption of Alternative 2.

Expiration of the Observer Program would result in significant costs to groundfish fishery participants. Without data collected by observers, NMFS would be forced to adopt a much more conservative approach towards managing the groundfish fisheries of the GOA and BSAI. Such an approach could lead to early fisheries closures because no observer data would be collected to monitor and estimate groundfish total allowable catch (TAC) and prohibited species catch. NMFS would likely rely more on population models to generate allowable biological catch and TAC recommendations. In addition, failure to maintain a groundfish observer program in the North Pacific would violate the terms of a variety of statutes, including the Endangered Species Act (ESA). The ESA requires observer coverage as a reasonable and prudent measure for certain management actions. These are non-discretionary measures under current biological opinions and are prescribed under the incidental take statements for endangered marine mammals, salmon, and seabirds.

In June 2006 the Council decided it would consider amendments to the FMPs proposing restructuring alternatives for the Observer Program when (1) legislative authority is established for fee-based alternatives; (2) the cost issues described above are clarified (by statute, regulation, or guidance) to allow estimated costs associated with the fee-based alternatives; or (3) the Council responds to changes in conditions that cannot be anticipated now.

On January 12, 2007, the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109–479). The reauthorized Magnuson-Stevens Act includes language that appears to allow the Council to adopt a fee collection program as considered in the analysis. However, the exact nature of the fee program authorized by the Magnuson-Stevens Act must be determined, the Council must consider new FMP amendments to restructure the current Observer Program, and NMFS must undergo rulemaking to implement a new Observer Program. Therefore, implementing a fee collection and restructured Observer Program prior to the December 31, 2007, expiration date would be difficult. Additionally,

the observer cost issues described above remain unresolved.

**Revisions to Observer Program Regulations**

For the reasons described above, this action removes the December 31, 2007, expiration date from the section heading of § 679.50 and from regulations at § 679.50(j)(1)(vi). The current Observer Program will continue until the Council recommends and the Secretary approves and implements further action to amend the program. Continuation of the current Observer Program is necessary to prevent interruption of many current management programs.

The proposed rule to extend the Observer Program beyond 2007 was published in the **Federal Register** on February 22, 2007 (72 FR 7948), and the public review and comment period closed on March 23, 2007. No comments were received during the comment period.

**Classification**

The Administrator, Alaska Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the Classification section of the proposed rule. The public comment period ended on March 23, 2007, but no comments were received on the economic analysis in the proposed rule.

NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This action would extend the effective date of regulations governing the Observer Program beyond December 31, 2007, the current expiration date. Extending the Observer Program beyond December 31, 2007, is necessary for uninterrupted continuation of many of the current management programs. The entities that would be directly regulated by this action are groundfish harvesters and processors of the BSAI and GOA EEZ. These entities include the groundfish catcher vessels, groundfish catcher processor vessels, and shoreside processors active in these areas. It also includes organizations to which direct allocations of groundfish are made, such as the BSAI Community Development Quota (CDQ) groups and the American Fisheries Act (AFA) fishing sectors.

The FRFA identified the following small entities that would be impacted by this action. Based on 2005 data, 23 of the 87 catcher/processors active in the North Pacific groundfish fisheries are considered small entities. All five North Pacific observer provider companies and the six CDQ groups are considered small entities. Estimates of the number of shoreside processors that are small entities include all Alaska processors that reported processing groundfish to NMFS in 2002. Due to insufficient ownership and affiliation information, it is not possible, at this time, to determine how many of the 73 shoreside processors qualify as small entities. However, at least eight shoreside processors would be considered large entities because of American Fisheries Act (AFA) affiliations. Finally, 807 catcher vessels have gross revenues less than $4 million for groundfish, and would be considered small entities.

In the FRFA, Alternative 1 is the no action alternative. Under this alternative, the current Observer Program would continue to be the only system under which groundfish observers would be provided in the BSAI and GOA groundfish fisheries. Regulations authorizing the current program expire at the end of 2007.

Alternative 2 is the preferred alternative, and would extend the existing program. Under this alternative, the 2007 sunset date for the existing program would be removed and the program would be extended indefinitely with no changes to the overall service delivery model until the Council took further action.

Alternative 3 would restructure the Observer Program for GOA groundfish and all halibut fisheries, while BSAI groundfish fisheries would be administered under the current system. A new ex-vessel value fee program would be established to fund coverage for GOA groundfish vessels, GOA-based processors, and halibut vessels operating throughout Alaska. Regulations that divide the fleet into zero, 30 percent, and 100 percent coverage categories would no longer apply to vessels and processors in the GOA. Fishermen and processors would no longer be responsible for obtaining their own observer coverage. Rather, NMFS would determine when and where to deploy observers based on data collection and monitoring needs, and would contract directly for observers using fee proceeds and/or direct Federal funding.

Alternative 4 would restructure the Observer Program for all fisheries with coverage less than 100 percent. All vessels and processors assigned to Tiers 3 and 4 would participate in the new program throughout Alaska and pay an ex-vessel value based fee. In general, this alternative would apply to all halibut vessels, all groundfish catcher vessels less than 125 ft (38.1 m) length overall and all non-AFA shoreside processors. All vessels and processors assigned to Tiers 1 and 2 (100 percent or greater coverage) would continue to operate under the current ''pay-as-you-go'' system throughout Alaska.

Alternative 5 would restructure the Observer Program for all groundfish and halibut fisheries off Alaska. This alternative would establish a new fee-based groundfish observer program in which NMFS has a direct contract with observer providers for all GOA and BSAI groundfish and halibut vessels. Under this alternative, vessels with 100 percent or greater coverage requirements would pay a daily observer fee and vessels with coverage requirements less than 100 percent would pay an ex-vessel value based fee.

As noted in the preamble above, Alternative 1 was rejected because it would result in significant costs to the fleet.

The impacts to small entities of the Alternatives 2 through 5, expressed as a percentage of the ex-vessel value of groundfish and halibut landed, are presented in the EA/RIR/FRFA prepared for this action and are summarized here. Current observer costs expressed as a percentage of ex-vessel landed catch value can be considered a reasonable estimate of the costs to each sector of the fleet under Alternative 2 (rollover of the existing program). In the BSAI management area for the years 2000 through 2003, these costs averaged 2.54 percent for catcher/processors, 1.49 percent for catcher vessels, and 0.89 percent for all processors, including motherships. In the GOA management area for these same years, these costs averaged 1.11 percent for catcher/processors, 1.71 percent for catcher vessels, and 0.65 percent for all processors.

Adoption of any of these alternatives as presented in the EA/RIR/FRFA would require selection of a low, middle, or high ex-vessel fee percentage. Estimated costs expressed as a percentage of ex-vessel value of groundfish and halibut landings for the low, middle, and high endpoint options for Alternative 3 are 0.52 percent, 0.70 percent, and 1.05 percent, respectively. Estimated costs in

terms of a percent of ex-vessel value for Alternative 4 are 0.69 percent, 0.83 percent, and 1.15 percent. Finally estimated costs in terms of a percent of ex-vessel value for Alternative 5 are 0.69 percent, 0.83 percent, and 1.15 percent. Each of these alternatives was rejected because they would not continue to provide the benefits associated with the Observer Program beyond 2007.

Because of the looming sunset clause contained within the No Action alternative, only Alternative 2 accomplishes the stated objectives, is consistent with applicable statutes, and would minimize the economic impact of the action on small entities. Alternative 2 is the only alternative that achieves the primary objective of this action to extend the Observer Program beyond December 31, 2007.

No additional recordkeeping, reporting, or compliance requirements are associated with this action.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 8, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.50, the section heading is revised to read and paragraph (j)(1)(vi) is removed as follows:

**§ 679.50 Groundfish Observer Program.**

* * * * *

[FR Doc. E7–11419 Filed 6–12–07; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 72, No. 113
Wednesday, June 13, 2007

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cirrus Design Corporation Models SR20 and SR22 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This proposed AD would require you to replace the cabin door rod ends at the upper and lower hinges of the cabin door with newly designed rod ends. This proposed AD results from two known occurrences of in-flight cabin door separation (one total separation and one retained by the door strut). The rod ends, a component of the door hinges, may fail and result in a door separation from the airplane while in flight. We are proposing this AD to prevent in-flight failure of the cabin door, which could result in door separation from the airplane.

**DATES:** We must receive comments on this proposed AD by August 13, 2007.

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

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

For service information identified in this proposed AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; Internet address: *http://www.cirrusdesign.com*.

**FOR FURTHER INFORMATION CONTACT:** Wess Rouse, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 297–7834.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–28245; Directorate Identifier 2007–CE–047–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Discussion

We received notification by CDC of a door that separated from a CDC SR22 airplane while in-flight. During descent for landing, the door separated from the airplane and struck the tail of the airplane. There have been many occurrences of broken or bent lower door hinges on CDC Models SR20 and SR22 airplanes, most discovered before flight.

This condition, if not corrected, could result in door separation from the airplane.

### Relevant Service Information

We have reviewed Cirrus Design Corporation Service Bulletin SB 2X–52–07, dated May 3, 2007.

The service information describes procedures for the installation of newly designed rod ends for the cabin door.

### FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to replace the cabin door rod ends at the upper and lower hinges of the cabin door with newly designed rod ends.

### Costs of Compliance

We estimate that this proposed AD would affect 1,562 airplanes in the U.S. registry.

We estimate the following costs to do the proposed replacement of the cabin door rod ends:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 2.5 work-hours × $80 per hour = $200 | $60 | $260 | $406,120 |

CDC will provide warranty credit as stated in Cirrus Design Corporation Service Bulletin SB 2X–52–07, dated May 3, 2007.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### Examining the AD Docket

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Cirrus Design Corporation:** Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD.

#### Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by August 13, 2007.

#### Affected ADs

(b) None.

#### Applicability

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

| Models | Serial numbers |
|---|---|
| SR20 ..... | 1423 through 1796. |
| SR22 ..... | 0795 and 0820 through 2499. |

#### Unsafe Condition

(d) This AD results from two known occurrences of in-flight cabin door separation (one total separation and one retained by the door strut). We are proposing this AD to prevent in-flight failure of the cabin door, which could result in door separation from the airplane.

#### Compliance

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Remove the old cabin door rod ends (both doors) and replace with the new designed cabin door rod ends, part number 21845–001. | Within the next 30 hours time-in-service (TIS) after the effective date of this AD or within 90 days after the effective date of this AD, whichever occurs first. | Follow Cirrus Design Corporation Service Bulletin SB 2X–52–07, dated May 3, 2007. |
| (2) Inspect cabin door fit-up and latch for proper fit, adjusting as necessary. | Within the next 30 hours time-in-service (TIS) after the effective date of this AD or within 90 days after the effective date of this AD, whichever occurs first. | Follow Cirrus Design Corporation Service Bulletin SB 2X–52–07, dated May 3, 2007. |

#### Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wess Rouse, Aerospace Engineer, FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 297–7834. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Related Information

(g) To get copies of the service information referenced in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; Internet address: *http://www.cirrusdesign.com*. To view the AD docket, go to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2007–28245; Directorate Identifier 2007–CE–047–AD.

Issued in Kansas City, Missouri, on June 6, 2007.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–11386 Filed 6–12–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2007–28448; Directorate Identifier 2006–SW–24–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model SA–365 N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes superseding an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. That AD currently requires a onetime inspection for end play in the pitch control rod assembly double bearing (bearing) using the tail rotor (T/R) hub control plate, and before further flight, replacing the bearing if end play is present. This action would require checking the T/R gearbox (TGB) oil level before the first flight of the day and maintaining the oil at the maximum level for certain helicopters. Also, this action would require, during each required inspection or at certain specified intervals, ensuring the oil is at the maximum level for certain other model helicopters. Also, this action would require inspecting the magnetic plug for chips at specified intervals. Depending on the quantity of chips found, this action would require either replacing the TGB before further flight or further inspecting for axial play in the T/R hub pitch change control spider (spider). If axial play is found in the spider, before further flight, this AD would require replacing the bearing. This proposal is prompted by the finding that metal chips were not detected on the magnetic plug due to insufficient oil flow because the oil in the TGB was being maintained at the minimum level. The actions specified by the proposed AD are intended to detect metal chips on the magnetic plug, to prevent damage to the bearing resulting in end play, loss of T/R pitch control, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before August 13, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Fax: 202–493–2251.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2007–28448, Directorate Identifier 2006–SW–24–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

### Discussion

On April 17, 2006, the FAA issued AD 2006–09–10, Amendment 39–14581 (85 FR 25930). That AD requires a onetime inspection for end play in the bearing using the T/R Hub control plate, and before further flight, replacing the bearing if end play is present. That action was prompted by an incident in which a pilot lost T/R pitch control of a helicopter while landing. The requirements of that AD are intended to detect damage to the bearing resulting in end play and prevent loss of T/R pitch control and subsequent loss of control of the helicopter.

Since issuing AD 2006–09–10, ECF has issued Alert Service Bulletin (ASB) 05.00.54, dated August 25, 2006, for Model SA–365N1, AS–365N2, AS 365 N3, to replace ASB 05.00.52, dated February 15, 2006. ECF has also issued ASB 05.37 for Model SA 366G1, dated August 25, 2006, to replace ASB 05.36, dated February 15, 2006. Also, ECF has issued ASB 05A015 for Model EC155B and EC155B1, dated August 25, 2006, to replace ASB 05A013, dated February 15, 2005. ASBs 05.00.52, 05.36, and 05A013 introduced a periodic check for absence of end play in the bearing. These ASBs were revised following the loss of yaw control on an AS365 MB helicopter due to progressive deterioration of the bearing. The metal chips resulting from this deterioration remained trapped in the area around the bearing and were not detected by the magnetic plug of the TGB. Further investigation and analyses revealed that the nondetection of the chips resulting from this deterioration was due to insufficient oil flow. This occurs when the oil level in the TGB is continuously maintained at the ''min'' level. Therefore, the ASBs specify keeping the TGB oil level at maximum level to ensure that any chips resulting from possible deterioration of the bearing are detected by the magnetic plug. Also, the ASBs specify checking for absence of play in the bearing should

chips be detected at the magnetic plug of the TGB.

The European Aviation Safety Agency (EASA) classified these ASBs as mandatory and issued Emergency AD (EAD) No. 2006–0258 R1–E on August 29, 2006. This EAD replaced EAD No. 2006–0051–E, dated February 20, 2006, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Under this agreement, EASA has kept the FAA informed of the situation described above. We have examined EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, the proposed AD would supersede AD 2006–09–10 to require the following:

- Before the first flight of each day for Model SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, check the T/R gearbox (TGB) oil level. An owner/operator (pilot) holding at least a private pilot certificate may perform the visual check of the oil level but must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). A pilot may perform these checks because they involve a routine check and no special tools are required.
- If a pilot finds the oil level is not at maximum, before further flight, a qualified mechanic must fill it to the maximum level.
- During each required inspection not to exceed 15 hours time-in-service (TIS) or 7 days, whichever occurs first, if the oil level is not at the maximum level, fill it to the maximum level for Model EC 155B and EC155B1 helicopters.
- Inspect the magnetic plug of the TGB for any chips at intervals not to exceed:
  - 25 hours TIS for helicopters with a magnetic plug without a chip electrical indication in the cockpit, or
  - 100 hours TIS and after any illumination of the TGB ''CHIP'' warning light for helicopters with a chip electrical indication in the cockpit.
- If you find any chips during the inspection, before further flight, if the quantity of chips on the magnetic plug is at or above the removal criteria, replace the TGB with an airworthy TGB. If the quantity of chips on the magnetic plug is below the removal criteria, inspect for axial play in the T/R hub pitch control change spider (spider). If there is axial play in the spider, replace the bearing with an airworthy bearing.

The actions would be required by following the specified portions of the ASBs described previously.

We estimate that this proposed AD would affect 133 helicopters of U.S. registry, and the proposed actions would require about:

- ½ hour to check the oil level, fill the oil to maximum level, and inspect the magnetic plug for metal chips,
- ½ hour to inspect for end play in the bearing;
- 8 hours to remove and replace the bearing (if necessary) at an average labor rate of $80 per work hour; and
- $2026 for required parts per helicopter.

Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $365,218, assuming the bearing is replaced on the entire fleet after 1 oil level check, 1 magnetic plug inspection, and 1 end play inspection.

## Regulatory Findings

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

## Authority for This Rulemaking

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–14581 (85 FR 25930, May 3, 2006), and by adding a new airworthiness directive (AD), to read as follows:

**Eurocopter France:** Docket No. FAA–2007–28448; Directorate Identifier 2006–SW–24–AD. Supersedes AD 2006–09–10, Amendment 39–14581, Docket No. FAA–2006–24588, Directorate Identifier 2006–SW–07–AD.

*Applicability:* Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters, with a tail rotor (T/R) pitch control rod assembly double bearing (bearing) installed, certificated in any category.

*Compliance:* Required as indicated.

To detect metal chips on the magnetic plug to prevent damage to the bearing resulting in end play, loss of T/R pitch control, and subsequent loss of control of the helicopter, do the following:

(a) Before the first flight of each day for Model SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, check the T/R gearbox (TGB) oil level. An owner/operator (pilot) holding at least a private pilot certificate may perform the visual check of the oil level but must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(b) If the oil level is not at maximum during the check in paragraph (a) of this AD, before further flight, a qualified mechanic must fill it to the maximum level.

(c) During each required inspection not to exceed 15 hours time-in-service (TIS) or 7

days, whichever occurs first, if the oil level is not at the maximum level, fill it to the maximum level for Model EC 155B and EC155B1 helicopters.

(d) Inspect the magnetic plug of the TGB for any chips as follows:

(1) At intervals not to exceed 25 hours TIS for helicopters with a magnetic plug without a chip electrical indication in the cockpit, or

(2) At intervals not to exceed 100 hours TIS and after any illumination of the TGB ''CHIP'' warning light for helicopters with a chip electrical indication in the cockpit.

(e) If you find any chips during the inspection in paragraph (d) of this AD, before further flight, follow the Accomplishment Instructions, paragraph 2.B.2.b), of Eurocopter Alert Service Bulletin No. 05.00.54 for Model SA–365N1, AS–365N2, AS 365 N3; No. 05A015 for Model EC 155B and EC155B1; or No. 05.37 for Model SA–366G1 all dated August 25, 2006 (ASBs), as appropriate for your model helicopter.

(1) If the quantity of chips on the magnetic plug, as referenced in the Operational Procedures, paragraph 2.B.2.b(1) of the ASBs is at or above the removal criteria, before further flight, replace the TGB with an airworthy TGB.

(2) If the quantity of chips on the magnetic plug is below the removal criteria, as referenced in the Operational Procedure, paragraph 2.B.2.b(2) of the ASBs.

(i) Inspect for axial play in the T/R hub pitch control change spider (spider) by following the additional steps in the Operational Procedure, paragraph 2.B.2.b(2) of the ASBs.

(ii) If there is axial play in the spider, before further flight, replace the bearing with an airworthy bearing.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

(g) Special flight permits will not be issued.

**Note:** The subject of this AD is addressed in European Aviation Safety Agency Revised Emergency AD No. 2006–0258 R1–E on August 29, 2006, which replaced AD No. 2006–0051–E, dated February 20, 2006.

Issued in Fort Worth, Texas, on June 5, 2007.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E7–11388 Filed 6–12–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. CGD05–07–059]**

**RIN 1625–AA08**

## Special Local Regulation for Marine Event, Bogue Sound, Morehead City, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary special local regulations for the ''Crystal Coast Super Boat Grand Prix'', a power boat race to be held on the waters of Bogue Banks adjacent to Morehead City, NC. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Morehead City Turning Basin including sections of the Intra-Coastal Waterways and Morehead City Channel during the power boat race.

**DATES:** Comments and related material must reach the Coast Guard on or before July 13, 2007.

**ADDRESSES:** You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704–5004, hand deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 398–6203, or e-mail them to *Dennis.M.Sens@uscg.mil.* The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247–4525 or via e-mail to *Christopher.D.Humphrey@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–059), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

On September 23, 2007, the Super Boat International Productions Inc. will sponsor the ''Crystal Coast Super Boat Grand Prix'', on the waters of Bogue Sound including the Morehead City Turning Basin, sections of the Intra-Coastal Waterway, and Morehead City Channel at Morehead City, North Carolina. The event will consist of approximately 35 power boats participating in two high-speed competitive races, traveling counter-clockwise around a race course. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

### Discussion of Proposed Rule

The Coast Guard proposes the establishment of special local regulations on specified waters of Bogue Sound. The regulation would be enforced from 9 a.m. to 5 p.m. on September 23, 2007. The effect of the regulation would be to restrict general navigation in the regulated area during the races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

**Regulatory Evaluation**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting a portion of Morehead City State Port Turning Basin, sections of the Intra Coastal Waterway and Morehead City Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of Bogue Sound including the Morehead City Turning Basin, Atlantic Intra-Coastal waterway and Morehead City Channel from 9 a.m. to 5 p.m. on September 23, 2007. This proposed rule would not have a significant economic impact on substantial number of small entities for the following reasons. Although the regulated area will apply to the Morehead City Channel, Morehead City Turning Basin and a two-mile segment of the Atlantic Intra-coastal Waterway, south and west of the Highway 70 Bridge, from approximately mile 204 of the Atlantic Intra-coastal Waterway to mile 206, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. The Patrol Commander will allow non-participating vessels to transit the event area between races. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, contact Coast Guard Sector North Carolina listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD 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 made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 a temporary § 100.35–T05–059 to read as follows:

**§ 100.35–T05–059 Bogue Sound, Morehead City, North Carolina.**

(a) *Regulated area.* The regulated area is established for the waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N longitude 076°42′48″ W, thence westerly to Morehead City Channel Daybeacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Daybeacon 2 (LLNR 38720), thence southeasterly to Money Island Daybeacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Daybeacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the ''Crystal Coast Super Boat Grand Prix'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(iv) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 5 p.m. on September 23, 2007.

Dated: June 5, 2007.

**Larry L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E7–11344 Filed 6–12–07; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2005–AL–0002–200623e; FRL–8326–8]**

## Approval and Promulgation of Implementation Plans Alabama: Approval of Revisions to the State Implementation Plan; Re-Opening of Comment Period

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

**ACTION:** Proposed rule; re-opening of public comment period.

**SUMMARY:** EPA is re-opening the comment period for a proposed rule published April 12, 2007 (72 FR 18428). On April 12, 2007, EPA proposed to approve a revision to the State Implementation Plan for the State of Alabama regarding the State's visible emissions rule, Alabama Rule 335–3–4–.01 ''Visible Emissions.'' At the request of a commentor, EPA is re-opening the comment period through July 11, 2007.

**DATES:** Written comments must be received on or before July 11, 2007.

**ADDRESSES:** Comments should be submitted to: Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9042. E-mail: *harder.stacy@epa.gov*. Additional instructions to comment can be found in the notice of proposed rulemaking published April 12, 2007 (72 FR 18428).

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

Dated: June 5, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7–11412 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2007–0187; FRL–8133–3]**

## Amitraz, Atrazine, Ethephon, Ferbam, Lindane, Propachlor, and Simazine; Proposed Tolerance Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke certain tolerances for the insecticides amitraz and lindane; the herbicides atrazine, propachlor, and simazine; the plant growth regulator ethephon; and the fungicide ferbam. Also, EPA is proposing to modify certain tolerances for the herbicide atrazine, propachlor, and simazine; the insecticide amitraz; the plant growth regulator ethephon; and the fungicide ferbam. In addition, EPA is proposing to establish new tolerances for the herbicide atrazine; the plant growth regulator ethephon. The regulatory actions proposed in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q).

**DATES:** Comments must be received on or before August 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0187, 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2007–0187. 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 Federal 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 web site 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Monisha Dandridge, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–0410; e-mail address: *dandridge.monisha@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:

- 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. 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.

*C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

*A. What Action is the Agency Taking?*

EPA is proposing to revoke, remove, modify, and establish specific tolerances for residues of Amitraz, Atrazine, Ethephon, Ferbam, Lindane, Propachlor, and Simazine in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet for amitraz, atrazine, ethephon, ferbam, lindane, propachlor, and simazine and in public dockets EPA–HQ–OPP–2004–0048 (amitraz), EPA–HQ–OPP–2003–0367 (atrazine), EPA–HQ–OPP–2004–0371 (ethephon), EPA–HQ–OPP–2004–0337 (ferbam), EPA–HQ–OPP–2002–0005 (lindane) and EPA–HQ–OPP–2005–0151 (simazine), respectively at *http://www.epa.gov/pesticides/reregistration/status.htm*.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies, provided that the tolerance is safe. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that: (1) Lawful use (sometimes through a label change) may result in a higher residue level on the commodity and (2) the tolerance remains safe, notwithstanding increased residue level allowed under the tolerance. In REDs, Chapter IV on ''Risk Management, Reregistration, and Tolerance Reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and paper copies for amitraz, ferbam, lindane and simazine can be found under their respective public docket numbers, identified above. Paper copies for atrazine, ethephon and propachlor are

available in the public docket for this proposed rule. Electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov/*. You may search for docket number EPA–HQ–OPP–2007–0187, then click on that docket number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe; i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with FFDCA section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION.**

In addition, EPA is proposing to revoke certain specific tolerances because they are either no longer needed or are associated with food uses that are no longer registered under FIFRA. Registrations were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

1. *Amitraz.* According to the TRED, the tolerance expression, which is currently expressed as ''residues of the insecticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino] methyl]]-*N*-methylmethanimidamide) and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethyl-phenyl)-*N*-methylmethanimidamide (both calculated as the parent) in or on the following raw agricultural commodities (RAC) at the following levels'' in 40 CFR 180.287 should be modified. EPA has determined that there is no need to require residue data for 2,4-dimethylaniline because the current analytical enforcement methods detect all residues containing the 2,4-dimethylaniline moiety. The tolerance expression should specify that the terminal residues of concern for enforcement purposes are amitraz and its metabolites containing the 2,4-dimethylaniline moiety. Consequently, EPA is proposing that the tolerance expression in 40 CFR 180.287(a) read as follows: ''(a) *General.* Tolerances are established for residues of the insecticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*- [[(2,4-dimethylphenyl)imino] methyl]]-*N*-methylmethanimidamide) and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent) in or on food commodities, as follows:''.

All registered uses of amitraz in beehives have been cancelled and therefore, the Agency determined that the tolerances on honey and honeycomb are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.287(a) for residues of amitraz and its metabolites in or on ''honey'' and ''honeycomb.''

There have been no active U.S. registrations for use of amitraz on cotton since May 3, 2006. However, Arysta Life Sciences requested that the tolerance in 40 CFR 180.287 on cotton, undelinted seed be retained for import purposes. EPA requires that Arysta Life Sciences submit information to the Agency about the use pattern in foreign countries and residue data from those countries to support the import tolerance. Certain tolerances were based on cotton as a livestock feed item; however there will no longer be any dietary exposure of livestock to amitraz through feed. Since cotton gin byproducts or cotton gin trash are not allowed to be fed to livestock in Europe, EPA does not expect imported meat to have secondary residues of amitraz. And although cottonseed is imported from Australia, U.S. production of cotton is about 55x greater than that produced in Australia. Therefore, even if such imported cottonseed were fed to animals, the contributions to the diet will be insignificant when compared with direct dermal treatment of amitraz to cattle and hogs. Consequently, the tolerances for egg, poultry, goat, and sheep commodities should be revoked. Therefore, EPA is proposing to revoke the commodity tolerances in 40 CFR 180.287(a) for residues of amitraz and its metabolites in or on ''egg;'' ''goat, fat;'' ''goat, meat byproducts;'' ''goat, meat;'' ''poultry fat/meat;'' ''poultry, meat byproducts;'' ''sheep, fat;'' ''sheep, meat byproducts;'' and ''sheep, meat.''

For adults, acute dietary risks from use of amitraz on hops, for which an import tolerance exists on dried hops, exceed the Agency's level of concern. The Agency's assessment concluded that the acute dietary risk is driven by the contribution of hops, and the acute dietary exposure estimate for adults 20 to 49 years old is 582% of the acute population adjusted dose (aPAD) at the 99.9th percentile. The Agency has evaluated the human health risks associated with all currently registered uses of amitraz and has determined that there is reasonable certainty that no harm to any population subgroup will result from aggregate non-occupational exposure to amitraz provided the tolerance for residues in or on hops is revoked and the registrant implements the mitigation measures identified in the RED, i.e., to reduce exposure from residential use; the registrant has agreed to reduce the amount of active ingredient in dog collars. Provided that mitigation measures in the RED are implemented and the tolerance on hops, dried cones is revoked, EPA is able to conclude that risk from exposure to amitraz fits within its own risk cup such that the tolerances for amitraz meet the FQPA safety standard. Therefore, under FFDCA section 408(e)(1), EPA is proposing to revoke the import tolerance in or on hop, dried cones in 40 CFR 180.287(a) because it does not meet requirements of FFDCA section 408(b)(2).

Currently, direct animal treatments of amitraz are registered for use on cattle and hogs. Based on the available data following dermal treatment and a 3–day pre-slaughter interval on cattle with amitraz which show combined amitraz residues of concern are as high as 0.09 ppm in fat, 0.02 ppm in muscle, and range from 0.08 to 0.21 ppm in kidney and liver, the Agency determined that the tolerances should be decreased on cattle, meat from 0.05 to 0.02 ppm, cattle, meat byproducts from 0.3 to 0.2 ppm and cattle, fat should remain unchanged at 0.1 ppm. Based on available data following dermal treatment of swine with amitraz which show combined amitraz residues of concern in liver and kidney as high as 0.05 ppm and 0.07 ppm, respectively, the Agency determined that the tolerances on hog, liver and hog, kidney should be decreased, from 0.2 to 0.1 ppm. Therefore, EPA is proposing in 40 CFR 180.287(a) to decrease the tolerances for ''cattle, meat byproducts'' from 0.3 to 0.2 ppm; ''cattle, meat'' from 0.05 to 0.02 ppm; ''hog, kidney'' from 0.2 to 0.1 ppm; ''hog, liver'' from 0.2 to

0.1 ppm; and ''milk, fat'' from 0.3 to 0.2 ppm.

2. *Atrazine.* Currently the tolerance expression in 40 CFR 180.220(a)(1) is expressed in terms of residues of atrazine and in paragraph (a)(2) in terms of combined residues of atrazine and its metabolites 2-amino-4-chloro-6-ethylamino-s-triazine, 2-amino-4-chloro-6-isopropylamino-s-triazine, and 2-chloro-4,6-diamino-s-triazine. Because EPA considers residues of chlorinated metabolites of atrazine in both animal and plant commodities to be of toxicological concern, the Agency has determined that atrazine and its chlorinated metabolites (2-amino-4-chloro-6-ethylamino-s-triazine, 2-amino-4-chloro-6-isopropylamino-s-triazine, and 2-chloro-4,6-diamino-s-triazine) should be included in the tolerance expression. Therefore, EPA proposes revising 40 CFR 180.220(a) by combining 40 CFR 180.220(a)(1) and (a)(2) into 40 CFR 180.220(a). Also, EPA is proposing to revise the tolerance expression in proposed recodified § 180.220(a) as follows: ''(a) *General.* Tolerances are established for the combined residues of the herbicide atrazine (2-chloro-4-ethylamino-6-isopropylamino-s-triazine) and its chlorinated metabolites 2-amino-4-chloro-6-isopropylamino-s-triazine, 2-amino-4-chloro-6-ethylamino-s-triazine, and 2,4-diamino-6-chloro-s-triazine, in or on food commodities as follows:''.

Currently, there is only one active registration for use of atrazine on perennial rye grass and that use is restricted to the Conservation Reserve Program lands in OK, OR, NE, and TX, and along roadsides in CO, KS, MT, NE, ND, SD, and WY. Because the label restricts grazing and cutting for feed, the Agency has determined that the tolerance on perennial rye grass is no longer needed and should be revoked. Therefore, EPA is proposing to revoke the tolerances in proposed recodified 40 CFR 180.220(a) for the combined residues of atrazine in or on rye grass, perennial at 15 ppm.

Because of the limited acreage, timing of application, restrictions on the use of range grasses for animal feeds, and the dominance of corn as a feed item, range grasses are not expected to impact either the livestock diet or the risk estimates significantly, and consequently were not included in the dietary exposure assessments. Currently, there are active registrations for atrazine use on range grass. Because the registrant has recently submitted new data to the Agency in support of a group tolerance and the range grass use has feeding and grazing restrictions on product labels, the Agency will maintain the existing tolerance. The Agency made a safety finding that atrazine tolerances are safe. Consequently, EPA will not take action to revoke the tolerance for atrazine in 40 CFR 180.220 on range grass at this time. However, in order to reflect current Agency practice the terminology should be revised to read grass, forage and grass, hay. Therefore, EPA is proposing to revise commodity terminology in proposed recodified 40 CFR 180.220(a) to conform to current Agency practice as follows: ''grass, range'' will be revised to read both ''grass, forage'' and ''grass, hay.''

Because EPA no longer considers sugarcane fodder and forage to be significant livestock feed items their tolerances are no longer needed and therefore should be revoked. Consequently, EPA is proposing to revoke the tolerances in proposed recodified 40 CFR 180.220(a) for sugarcane, fodder and sugarcane, forage. EPA's listing of significant food and feed commodities (raw and processed) can be found in Table 1 of Guideline OPPTS 860.1000 (available at *http://www.epa.gov/opptsfrs/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/*).

Based on available field trial data that showed combined atrazine residues of concern were as high as 0.27 ppm to 1.59 ppm in or on corn, field, stover and corn, sweet, stover, respectively, the Agency determined that the tolerances on corn, pop, stover; corn, fodder, field; and corn, sweet, stover should be decreased from 15 to 0.5 ppm, 15 to 0.5 ppm, and 15 to 2.0 ppm, respectively. Therefore, EPA is proposing to decrease the tolerances in proposed recodified 40 CFR 180.220(a) on ''corn, pop, stover'' to 0.5 ppm; ''corn, fodder, field'' to 0.5 ppm and to revise the commodity terminology to ''corn, field, stover;'' and ''corn, sweet, stover'' to 2.0 ppm.

Based on field trial data that showed atrazine residues of concern as high as 15 ppm on corn, pop, forage, the Agency determined that the tolerance on corn, pop, forage should be decreased from 15 to 1.5 ppm. Therefore, EPA is proposing to decrease the tolerance in proposed recodified 40 CFR 180.220(a) on ''corn, pop, forage'' to 1.5 ppm.

Based on available field trial data that showed combined atrazine residues of concern were less than 0.2 ppm (less than the combined Limit of Quantitation (LOQs) for atrazine and its chlorometabolites) in or on field corn grain and sweet corn grain, the Agency determined that the tolerances on field corn grain and sweet corn grain should each be decreased from 0.25 to 0.20 ppm. Therefore, EPA is proposing to decrease the tolerances in proposed recodified 40 CFR 180.220(a) from 0.25 to 0.20 ppm for ''corn, sweet, kernel plus cob with husks removed'' and ''corn, grain'' and revise the terminology to ''corn, field, grain'' and ''corn, pop, grain.''

Based on available data that indicate combined atrazine residues of concern were as high as <0.05 ppm in or on macadamia nuts, the Agency determined that the tolerance should be decreased to 0.20 ppm. Therefore, EPA is proposing to decrease the tolerance in proposed recodified 40 CFR 180.220(a) for combined residues of atrazine in or on ''nut, macadamia'' from 0.25 to 0.20 ppm.

Based on available field trial data that indicate the combined atrazine residues of concern as high as 0.20 ppm in or on grain sorghum, and 0.23 ppm in or on sorghum stover, the Agency determined the tolerances should be decreased to 0.20 ppm in or on sorghum, grain; grain; and 0.50 ppm in or on sorghum, stover. EPA is also revising the commodity terminology to reflect current Agency practice. Therefore, EPA proposes decreasing and revising the tolerances in proposed recodified 40 CFR 180.220(a) for the combined residues of atrazine in or on ''sorghum, grain'' at 0.25 ppm to ''sorghum, grain, grain'' at 0.20 ppm and ''sorghum, fodder'' at 15 ppm to 0.50 ppm.

Based on field trial data (at 0.8–2x application rate) that show combined atrazine residues of concern as high as <0.20 ppm in or on sugarcane, the Agency determined that the tolerance should be decreased to 0.20 ppm. Therefore, EPA is proposing to decrease the tolerance in proposed recodified 40 CFR 180.220(a) on sugarcane, cane from 0.25 to 0.20 ppm.

Based on field trial data that showed atrazine residues of concern as high as 0.06 ppm on wheat grain and 0.34 ppm on wheat straw, EPA determined that the tolerances on wheat grain and wheat straw should be decreased from 0.25 to 0.1 ppm and from 5.0 to 0.5 ppm, respectively. Therefore, EPA is proposing in proposed recodified 40 CFR 180.220(a) to decrease the tolerances on wheat, grain to 0.1 ppm and wheat, straw to 0.5 ppm.

In the atrazine RED, the Agency recommends revising the tolerance at 5 ppm on wheat, fodder to wheat, forage and decreasing that tolerance to 1.5 ppm. The Agency believes that a clearer recommendation should have been to establish a tolerance on wheat forage at 1.5 ppm and revise the commodity terminology for the tolerance at 5 ppm on wheat, fodder to ''wheat, hay.'' Based on field trial data that showed atrazine

residues of concern as high as 1.11 ppm on wheat forage, EPA determined that a tolerance on wheat forage should exist at 1.5 ppm. Nevertheless, sometime between July 1, 2002 and July 1, 2003, the tolerance in 40 CFR 180.220 at 5 ppm on wheat, fodder underwent a revision in nomenclature to ''wheat, straw,'' which resulted in two tolerances on wheat straw, both at 5 ppm. Because there is already a tolerance on wheat straw in 40 CFR 180.220 (see above proposal to decrease the tolerance on wheat straw to 0.5 ppm, which is considered by the Agency to be the appropriate level based on data), the duplicate wheat straw tolerance should be revoked. Therefore, EPA is proposing in 40 CFR 180.220 to revoke the duplicate tolerance on wheat, straw and establish a tolerance on wheat, forage at 1.5 ppm. In addition, based on field trial data that showed atrazine residues of concern as high as 1.11 ppm on wheat forage and adjusting for the difference in dry matter between hay and forage (88% vs. 25%), the Agency expects combined residues of about 3.9 ppm on wheat hay and therefore determined that a tolerance should be established on wheat hay at 5.0 ppm. Consequently, EPA is proposing to establish a tolerance in 40 CFR 180.220(a) on wheat, hay at 5.0 ppm.

Based on available field trial data that indicate combined atrazine residues of concern as high as 0.20 ppm in or on sorghum forage, the Agency determined the tolerances should be decreased to 0.25 ppm and revise the terminology to read sorghum, grain, forage and sorghum, forage, forage. However, that recommended tolerance level reduction is based on label restrictions which require that all atrazine labels with postemergent sorghum uses have a minimum PHI of 45 days, and preemergent sorghum uses have a minimum PHI of 60 days. In addition, available field trial data indicate that combined atrazine residues of concern as high as 1.11 ppm and 1.15 ppm in or on corn field forage and corn sweet forage respectively, based on atrazine labels for postemergent and preemergent field corn use which require a minimum PHI of 60–days and a PHI of 45 days for sweet corn use, EPA has determined that these tolerances should be decreased from 15 to 1.5 ppm. After EPA has confirmed that active registrations for the use of atrazine on field and sweet corn forage and sorghum forage have been amended to reflect the appropriate pre-harvest intervals (PHIs), the Agency will take action to modify tolerances on field and sweet corn forage; sorghum forage; milk, and the fat, meat and meat byproducts of cattle, goats, horses, and sheep in proposed recodified 40 CFR 180.220. Therefore, EPA will not take action on these tolerances at this time, but will follow-up with the registrants and address the tolerances, if needed, in a future publication in the **Federal Register**. However, EPA is proposing to revise commodity terminology in 40 CFR 180.220(a) to conform to current Agency practice as follows: ''sorghum, forage'' to ''sorghum, grain, forage'' and ''sorghum, forage, forage.''

3. *Ethephon.* Because there have been no registered uses of ethephon on cranberries and figs since January 1991, the Agency determined that the tolerances are no longer needed and should be revoked. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.300(a) on ''cranberry'' and ''fig.''

Based on available processing data which show that residues of ethephon do not concentrate in or on pearled barley, EPA determined that the tolerance is no longer needed, and therefore should be revoked. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.300(a) on ''barley, pearled barley.''

Because active registrations with use for ethephon on pumpkins prohibit harvesting for human or animal consumption and limit use to seed production only, the Agency has determined that the tolerance on pumpkin is no longer needed. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.300(a) on ''pumpkin.''

Based on the Maximum Theoretical Dietary Burden (MTDB) for dairy cattle and available ruminant feeding data (0.93x), ethephon residues in the milk, fat, meat, kidney, and liver of cattle were expected by the Agency (at 1x MTDB) to be as high as 0.008 ppm, 0.108 ppm, 0.017 ppm, 0.686 ppm, and 0.102 ppm, respectively. Therefore, tolerances on the fat and meat of cattle, goats, hogs, horses, and sheep should be decreased from 0.1 to 0.02 ppm; tolerances on meat byproducts of cattle, goats, horses, and sheep should be separated into ''meat byproducts, except kidney,'' and ''kidney,'' and the tolerances on meat byproducts, except kidney should be increased from 0.1 to 0.2 ppm and tolerances on kidney should be increased from 0.1 to 1.0 ppm; and the tolerance on milk should be decreased from 0.1 to 0.01 ppm.

Consequently, EPA is proposing in 40 CFR 180.300(a) to change some commodity terminology by revising the terminology ''cattle, meat byproducts;'' ''goat, meat byproducts;'' ''hog, meat byproducts;'' ''horse, meat byproducts;'' and ''sheep, meat byproducts'' to read ''cattle, meat byproducts, except kidney;'' ''cattle, kidney;'' ''goat, meat byproducts, except kidney;'' ''goat, kidney;'' ''hog, meat byproducts, except kidney;'' ''hog, kidney;'' ''horse, meat byproducts, except kidney;'' ''horse, kidney'' and ''sheep, meat byproducts, except kidney;'' and ''sheep, kidney;'' respectively.

In addition, EPA is proposing to decrease tolerances on ''cattle,fat;'' ''cattle, meat;'' ''goat, fat;'' ''goat, meat;'' ''hog, fat;'' ''hog, meat;'' ''horse, fat;'' ''horse, meat;'' ''sheep, fat;'' and ''sheep, meat'' to 0.02 ppm.

EPA is also proposing to increase tolerances on ''cattle, meat byproducts, except kidney;'' ; ''goat, meat byproducts, except kidney;'' ''hog, meat byproducts, except kidney;'' ''horse, meat byproducts, except kidney;'' and ''sheep, meat byproducts, except kidney to 0.2 ppm; and to increase tolerances on ''cattle, kidney;'' ''goat, kidney;'' ''hog, kidney;'' ''horse, kidney;'' and ''sheep, kidney'' to 1.0 ppm; and decrease the tolerance on ''milk'' to 0.01 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the available data that show residues of ethephon as high as 0.49 ppm and 4.93 ppm in or on coffee, bean, green and cotton, undelinted seed, respectively, EPA determined that the tolerances on coffee, bean, green and cotton, undelinted seed should be increased from 0.1 to 0.5 ppm and 2.0 to 6.0 ppm, respectively. Therefore, the Agency is proposing to increase the tolerance on ''coffee, bean, green'' and on ''cotton, undelinted seed'' in 40 CFR 180.300(a) to 0.5 ppm, and 6.0 ppm, respectively; and to remove the ''(N)'' designation to conform to current Agency administrative practice, where the ''(N)'' designation means negligible residues. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Compatibility exists between the reassessed U.S. tolerance of 5.0 ppm and Codex MRL for ethephon residues in or on apples. However, because data indicate that ethephon residues concentrate (1.6x) in apple juice, EPA determined that a tolerance should be established at 10.0 ppm in apple, juice. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.300(a) in ''apple, juice'' at 10.0 ppm.

Based on data that show ethephon residues as high as 150.0 ppm in or on cotton gin byproducts, EPA determined that a tolerance on cotton gin byproducts should be established at 180.0 ppm. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.300(a) on ''cotton, gin byproducts'' at 180.0 ppm.

Based on the available data that show ethephon residues as high as 0.52 ppm in or on filbert, EPA determined that a tolerance on filbert should be established at 0.80 ppm. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.300(a) on ''filbert'' at 0.80 ppm.

Based on data that show ethephon residues <2.0 ppm in wheat grain and that residues concentrate (1.8x) in wheat germ, EPA determined that a tolerance should be established at 5.0 ppm in or on wheat, germ. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.300(a) on ''wheat, germ'' at 5.0 ppm.

Based on available exaggerated (1.6x MTDB) poultry feeding data that show residues of ethephon as high as 0.0036 ppm in eggs, 0.032 ppm in fat, 0.015 ppm in meat, and 0.068 ppm in liver, EPA calculated residues to be 0.002 ppm in egg, 0.02 ppm in fat, 0.009 ppm in meat, and 0.04 ppm in liver at the 1x MTDB for poultry. The Agency determined that the tolerances should be established on egg at 0.002 ppm, fat at 0.02 ppm, meat and meat byproducts, except liver at 0.01 ppm, and liver at 0.05 ppm. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.300(a) on ''egg'' at 0.002 ppm; ''poultry, fat'' at 0.02 ppm; ''poultry, meat'' at 0.01 ppm; ''poultry, meat byproducts, except liver'' at 0.01 ppm; and ''poultry, liver'' at 0.05 ppm.

Cucumber was not included in the dietary risk assessment for ethephon because the use was to become non-food; i.e., limited to cucumbers grown for seed production and product labels were to include that limitation and a restriction to prohibit the harvesting of treated cucumbers for human or animal consumption. Therefore, the ethephon RED recommended revocation of the tolerance on cucumber. However, based on the estimated acute and chronic dietary risks of ethephon are 77% of the aPAD and 16% of the chronic population adjusted dose (cPAD), the relatively low tolerance level for cucumber (0.1 ppm) and maximum estimate of 1% crop treated (about 2000 acres), the Agency determined that the addition of cucumbers to the dietary risk assessment would not significantly contribute to dietary or drinking water risk estimates. Currently, the Agency is in the process of confirming the completeness of amendments for two active registrations concerning the inclusion of the limitation and restriction on cucumber use (particularly under the product label application instructions for California only). Consequently, the Agency will not propose to take action on the cucumber tolerance in 40 CFR 180.300(a) for ethephon at this time, but expects to address it in a future publication in the **Federal Register**.

The proposed tolerance actions herein for ethephon, to implement the recommendations of the ethephon TRED, reflect use patterns in the United States which support a different tolerance than the Codex value on cottonseed; chicken eggs; meat of poultry; meat of cattle, goats, hogs, horses, and sheep; and milk of cattle, goats, and sheep. However, compatibility exists between the reassessed U.S. tolerances and Codex MRLs for ethephon residues in or on apples, blueberries, cherries, pineapples, tomatoes, and walnuts.

4. *Ferbam.* Tolerances for residues of ferbam in or on food and feed commodities are currently established under 40 CFR 180.114(a) for residues of the fungicide ferbam (ferric dimethyldithiocarbamate), calculated as zinc ethylenebisdithiocarbamate (zineb). Current analytical methodology employs common moiety detection in which dithiocarbamate residues are converted to carbon disulfide (CS2). Based on this new methodology, the Agency has determined that the tolerance expression should reflect residues of ferbam (ferric dimethyldithiocarbamate), calculated as carbon disulfide. Therefore, EPA is proposing to modify the tolerance expression in 40 CFR 180.114(a) to residues of the fungicide ferbam (ferric dimethyldithiocarbamate) calculated as carbon disulfide.

In order to account for the conversion of ferbam residues previously calculated as zineb to that calculated as carbon disulfide, EPA determined that a conversion factor of 0.55x should be applied to existing tolerance levels. Consequently, the tolerances for apples, cherries, cranberries, citrus fruit, grapes, mangoes, nectarines, peaches, and pears currently at 7 ppm should be decreased to 4 ppm. Also, because mango has only one active FIFRA section 24(c) registration for use in Florida, the tolerance should be moved from § 180.114(a) to § 180.114(c) for regional tolerances. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.114(a) on ''apple;'' ''cherry;'' ''cranberry;'' ''grape;'' ''nectarine;'' ''peach;'' and ''pear;'' each to 4.0 ppm; ''fruit, citrus'' to 4.0 ppm; revise the commodity terminology for fruit, citrus to read ''fruit, citrus, group 10'' to decrease the tolerance on mango to 4.0 ppm and recodify the entry for mango into § 180.114(c).

There have been no active ferbam registrations on apricot, asparagus, blueberries, boysenberries, cucumbers, peas, squash, and tomatoes in the United States since 1998. There have been no active ferbam registrations on blackberries, dewberries, loganberries, or youngberries in the United States since October, 2004. Because their tolerances are no longer needed, EPA is proposing to revoke the commodity tolerances in 40 CFR 180.114(a) for residues of ferbam in or on ''apricot;'' ''blackberry;'' ''blueberry;'' ''boysenberry;'' ''dewberry;'' ''loganberry;'' ''pea;'' ''squash;'' and ''youngberry.'' There have been no active ferbam registrations on beans, cabbage, lettuce, and raspberries since July 3, 2006 and existing stocks were allowed by the Agency to be sold and distributed until October 27, 2006 (70 FR 62112, October 28, 2005) (FRL–7743–6). The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by October 27, 2007. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.114(a) for residues of ferbam on ''bean,'' ''cabbage,'' ''lettuce,'' and ''raspberry'' with an expiration/revocation date of October 27, 2007. On October 26, 1998 (63 FR 57067)(FRL–6035–6), EPA published a final rule in the **Federal Register** in which it responded to the comment by Interregional Research Project No. 4 (IR-4) that it would support uses of ferbam on guava and papaya. However, in a correspondence to the Agency dated February 24, 2005, IR-4 withdrew its support for the use of ferbam on papaya. Also, in recent correspondence, the IR-4 no longer expressed that it was interested in supporting the use of ferbam on guava. Because there are no active registrations for ferbam use on guava and papaya and there is no longer an expressed need for their tolerances, these tolerances should be revoked. Therefore, the Agency is proposing to revoke the tolerances in 40 CFR 180.114(a) on guava and papaya. Also, on October 26, 1998 (63 FR 57067)(FRL–6035–6), EPA published a final rule in the **Federal Register** in which it responded to the Canadian Horticultural Council's comment asking that certain tolerances, including those in 40 CFR 180.114 for ferbam use on

asparagus, cucumbers, and tomatoes, not be revoked. At that time, the Agency responded that it would not revoke the tolerances on asparagus, cucumbers, and tomatoes in 40 CFR 180.114. However, in the interim, no interested party has declared a need for tolerances on asparagus, cucumber, or tomato commodities and interest in providing the appropriate data for import purposes. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.114 on asparagus, cucumber, and tomato.

There are no Codex Maximum Residue Limits (MRLs) for ferbam use per se. However, Codex MRLs exist for the dithiocarbamates from the use of various dithiocarbamates and they are currently expressed as total dithiocarbamates, determined or carbon disulfide (milligrams/kilogram (mg/kg)). The proposed modification of the U.S. tolerance expression for ferbam to be calculated as carbon disulfide will improve the comparison between U.S. tolerances on ferbam with Codex MRLs on total dithiocarbamates. The proposed U.S. tolerances of 4.0 ppm for ferbam residues (calculated as carbon disulfide) on cranberry and citrus fruit are different from the Codex MRLs of 5.0 and 10.0 mg/kg for total dithiocarbamate residues (calculated as carbon disulfide) on cranberry and mandarins, respectively. The difference may reflect different use patterns in the United States which support a different tolerance level and/or result from Codex's inclusion of various dithiocarbamates in its tolerance definition.

5. *Lindane.* In July 2006, EPA created an addendum to the July 2002 Lindane RED. Both documents are available in public docket EPA–HQ–OPP–2002–0202. In the 2006 Lindane RED Addendum, which reflects the Agency's conclusions on the lindane seed treatment uses in light of the information gathered since the 2002 RED, the Agency established that lindane seed treatment uses are ineligible for reregistration and that the existing lindane fat tolerances should be revoked. In the addendum, the Agency concludes that the risks of continued use of lindane outweigh the benefits. In addition, the addendum noted that as of July 27, 2006, the Agency had received requests from all lindane technical and end-use product registrants to voluntarily cancel all lindane product registrations. Consequently, in the **Federal Register** notice of August 23, 2006 (71 FR 49445) (FRL–8089–1), EPA published its receipt of requests to voluntarily cancel lindane registrations and provided a public comment period. The Agency did not receive any comments that required further review of the cancellation requests. Further, the registrants did not withdraw their requests. Accordingly, EPA sent final cancellation orders to the registrants granting the requested cancellations and published a notice announcing these cancellation orders in the **Federal Register** on December 13, 2006 (71 FR 74905) (FRL–8103–4). In that notice, EPA announced issuance of final orders cancelling the registrations of all pesticide products containing the pesticide lindane, including those concerning lindane registrations for use as a seed treatment on grain. The cancellation of manufacturing-use products was effective on October 4, 2006, and the cancellation of end-use products is effective on July 1, 2007. The Agency has established in the cancellation orders that July 1, 2007 is the last day on which these lindane manufacturing-use products can be used and October 1, 2009 is the last day on which these lindane end-use products can be used. FFDCA section 408(l)(5) protects treated commodities that are still in the channels of trade after revocation if they were lawfully treated. Because lindane seed treatment registrations are canceled as described above, EPA believes that the associated tolerances for the fat of cattle, goats, hogs, horses, and sheep fed lindane-treated seeds will no longer be needed after October 1, 2009. Therefore, EPA is proposing to revoke tolerances in 40 CFR 180.133 on ''cattle, fat;'' ''goat, fat;'' ''hog, fat;'' ''horse, fat;'' and ''sheep, fat'' with an expiration/revocation date of October 2, 2009. Also, because the time-limited tolerances on ''broccoli;'' ''brussels sprouts;''''cabbage;'' and ''cauliflower'' expired on April 26, 2007, EPA is proposing to remove them from 40 CFR 180.133.

6. *Propachlor.* Currently, propachlor tolerances are established in 40 CFR 180.211(a) for residues of propachlor and its metabolites, calculated as propachlor. The Agency determined that residues of concern are propachlor and its metabolites which contain the *N*-isopropylaniline moiety. Therefore, EPA is proposing to revise the tolerance expression in 40 CFR 180.211(a) as follows: ''(a) *General.* Tolerances are established for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites containing the *N*-isopropylaniline moiety, calculated as 2-chloro-*N*-isopropylacetanilide, in or on the following raw agricultural commodities:''

Also, in 40 CFR 180.211(a), EPA is proposing to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice, where the ''(N)'' designation means negligible residues.

Based on poultry feeding data and MTDB for poultry, EPA determined that there is no reasonable expectation of finite residues of propazine residues of concern in eggs (<0.02 ppm at 60x MTDB) and in the fat, meat, and meat byproducts of poultry (as high as 0.02 ppm at 60x MTDB) resulting from the feeding of propachlor treated commodities. Therefore, the tolerances on fat, meat, meat byproducts for poultry are no longer needed in accordance with 40 CFR 180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.211 on ''egg;'' ''poultry, fat;'' ''poultry, meat;'' and ''poultry, meat byproducts.''

Based on available exaggerated cattle feeding data that show combined propachlor residues of concern at the dose level of 1.3x MTDB as high as 0.12 in kidney, and 0.04 ppm in fat and liver, EPA determined that tolerances on the fat and meat byproducts of cattle, goats, horses, and sheep should be increased from 0.02 to 0.05 ppm, and individual tolerances on the kidney of goats, horses, and sheep should be separated from ''meat byproducts'' and increased to 0.2 ppm. Therefore, the Agency is proposing to increase the tolerances in 40 CFR 180.211 on ''cattle, fat;'' ''goat, fat;'' ''horse, fat;'' and ''sheep, fat'' to 0.05 ppm; revise their commodity terminologies to read ''cattle, meat byproducts, except kidney;'' ''goat, meat byproducts, except kidney;'' ''horse, meat byproducts, except kidney;'' and ''sheep, meat byproducts, except kidney;''increase tolerances on cattle, meat byproducts, except kidney; goats, meat byproducts, except kidney; horse, meat byproducts, except kidney; and sheep, meat byproducts, except kidney; to 0.05 ppm and establish separate tolerances for ''cattle, kidney;'' ''goat, kidney;'' ''horse, kidney;'' and ''sheep, kidney'' at 0.2 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that showed combined propachlor residues of concern as high as 7.67 ppm and 10.59 ppm in or on sorghum forage and stover, respectively, EPA determined that the tolerances on sorghum forage and sorghum, grain, stover should each be increased from 5.0 to 8.0 ppm and 12.0 ppm, respectively. Therefore, EPA is proposing in 40 CFR 180.211 to revise the commodity terminology ''sorghum,

forage'' to read ''sorghum, grain, forage'' and ''sorghum, forage, forage'' and increase the tolerance from 5.0 to 8.0 ppm; and increase ''sorghum, grain, stover'' from 5.0 to 12.0 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that showed combined propachlor residues of concern as high as 0.19 ppm and 2.12 ppm in or on corn grain and forage, respectively, EPA determined that the tolerances on corn grain and corn forage should be increased from 0.1 to 0.2 ppm and 1.5 to 3.0 ppm, respectively. Therefore, the Agency is proposing in 40 CFR 180.211 to revise thecommodity terminology for ''corn, grain'' to read ''corn, field, grain'' and to increase the tolerance on corn, field, grain to 0.2 ppm, to increase ''corn, forage'' to 3.0 ppm, and revisethe commodity terminology to read ''corn, field, forage'' and ''corn, sweet, forage.'' The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that showed combined propachlor residues of concern no greater than 1.0 ppm in or on corn stover, EPA determined that the tolerance on corn stover should be established at 1.0 ppm. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.211(a) on corn, field, stover at 1.0 ppm.

In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.211 to conform to current Agency practices as follows: ''sorghum, grain'' to ''sorghum, grain, grain.''

7. *Simazine.* Because there are no active food use U.S. registrations on bermuda grass and no active U.S. registrations for simazine use associated with banana and fish, their tolerances are no longer needed and therefore should be revoked. Consequently, EPA is proposing to revoke in 40 CFR 180.213(a)(1) the tolerances on ''bermuda grass;'' ''bermudagrass, forage;'' and ''bermudagrass, hay'' and proposing to revoke in 40 CFR 180.213(a)(2) the tolerances on ''banana'' and ''fish'' and remove § 180.213(a)(2).

Currently, simazine tolerances are established in 40 CFR 180.213(a)(1) for residues of simazine only. The Agency determined that residues of concern are simazine and its two chlorinated degradates. Therefore, EPA is proposing to revise 40 CFR 180.213(a) to read as follows: ''(a) *General.* Tolerances are established for the combined residues of the herbicide simazine (2-chloro-4,6-bis(ethylamino)-s-triazine) and its two chlorinated degradates (2-amino-4-chloro-6-ethylamino-s-triazine and 2,4-diamino-6-chloro-s-triazine), the total residue to be measured in or on the following food commodities:''. The revision of 180.213(a) will eliminate paragraph designations (a)(1) and (a)(2).

Because there are no active food use U.S. registrations on alfalfa and sugarcane, molasses, the Agency has determined the tolerances in or on alfalfa and sugarcane, molasses should be revoked. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.213 in or on ''alfalfa;'' ''alfalfa, forage;'' ''alfalfa, hay;'' and ''sugarcane, molasses.'' Also, because the time-limited tolerances on ''artichoke, globe;'' ''asparagus;'' and ''sugarcane, cane'' expired on December 31, 2000, EPA is proposing to remove them from 40 CFR 180.213.

Because there no longer are registered uses of simazine on pasture and rangeland grasses, the tolerances on grass, grass forage, and grass hay are no longer needed. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.213 on ''grass;'' ''grass, forage;'' and ''grass, hay.''

Because the use of simazine on boysenberry and dewberry is covered by the reassessed tolerance on blackberry, the tolerances on boysenberry and dewberry are no longer needed and therefore should be revoked. Consequently, EPA is proposing to remove the tolerances in 40 CFR 180.213 on ''boysenberry'' and ''dewberry,'' in accordance with 40 CFR 180.1(g), since the tolerance on blackberry covers boysenberry and dewberry.

Based on poultry feeding data and MTDB for poultry, EPA determined that there is no reasonable expectation of finite residues of simazine residues of concern in the fat, meat, and meat byproducts of poultry resulting from the feeding of simazine treated commodities. Therefore, the tolerances on fat, meat, meat byproducts for poultry are no longer needed in accordance with 40 CFR 180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.213 on ''poultry, fat;'' ''poultry, meat;'' and ''poultry, meat byproducts.'' However, because detectable residues of 2,4-diamino-6-chloro-s-triazine were found in egg at 6.3x the MTDB, the Agency determined that the tolerance on egg should be increased from 0.02 ppm and set at the combined LOQ of 0.03 ppm. Therefore, the Agency is proposing to increase the tolerance in 40 CFR 180.213 on ''egg'' to 0.03 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on ruminant feeding data and MTDB for swine, EPA determined that there is no reasonable expectation of finite residues of simazine residues of concern in the fat, meat, and meat byproducts of hogs resulting from the feeding of simazine treated commodities. Therefore, the tolerances on fat, meat, meat byproducts for hogs are no longer needed inaccordance with 40 CFR 180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.213 on ''hog, fat;'' ''hog, meat;'' and ''hog, meat byproducts.''

Based on ruminant feeding data for (5.6 to 6.0x MTDB) simazine that show combined residues were <0.03 ppm (below the combined LOQ of 0.03 ppm), EPA determined that there is no reasonable expectation of finite combined simazine residues of concern in the fat of cattle, goats, horse, and sheep. Therefore, the tolerances on the fat for cattle, goats, horses and sheep are no longer needed in accordance with 40 CFR 180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.213 on ''cattle, fat;'' ''goat, fat;'' ''horse, fat;'' and ''sheep, fat.''

In addition, based on available exaggerated ruminant feeding data that show combined residues were quantifiable at the dose level of 11.2 to 12.0x MTDB of simazine, EPA determined that tolerances on the meat and meat byproducts of cattle, goats, horses, and sheep, and milk should be set at the combined LOQ of 0.03 ppm and increased from 0.02 to 0.03 ppm. Therefore, the Agency is proposing to increase the tolerances in 40 CFR 180.213 on ''cattle, meat;'' ''cattle, meat byproducts;'' ''goat, meat;'' ''goat, meat byproducts;'' ''horse, meat;'' ''horse, meat byproducts;'' ''sheep, meat;'' ''sheep, meat byproducts;'' and ''milk'' to 0.03 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that showed combined simazine residues of concern as high as <0.15 ppm in or on apples, avocados, corn, forage, corn, grain, grapes, olives, and peaches, and <0.20 ppm in or on plums, EPA determined that the tolerances on these commodities should each be decreased from 0.25 to 0.20 ppm. Therefore, the

Agency is proposing to decrease the tolerances in 40 CFR 180.213 on ''apple,'' ''avocado,'' ''corn, forage;'' ''corn, grain;'' ''grape,'' ''olive,'' ''peach,'' and ''plum'' to 0.20 ppm and to revise the commodity terminology for ''corn, forage'' to read ''corn, field, forage'' and ''corn, sweet, forage'' and for ''corn, grain'' to read ''corn, field, grain'' and ''corn, pop, grain.'' In addition, EPA is proposing to revise the commodity terminology in 40 CFR 180.213 for ''corn, stover'' to read ''corn, field, stover;''''corn, pop, stover;'' and ''corn, sweet, stover.''

Based on available data that showed combined simazine residues of concern as high as <0.15 ppm in or on blueberries and raspberries, EPA determined that the tolerances on these commodities should each be decreased from 0.25 to 0.20 ppm. Also, the Agency believes that data for the two chlorinated degradates of simazine can be translated from raspberries to blackberries and loganberries. From the translated data and existing data for simazine residues only on blackberry and loganberry, EPA determined that the tolerances on blackberry and loganberry should also be decreased from 0.25 to 0.20 ppm. Therefore, the Agency is proposing to decrease the tolerances in 40 CFR 180.213 on ''blueberry,'' ''blackberry,'' ''loganberry,'' and ''raspberry'' to 0.20 ppm.

Based on available data that showed combined simazine residues of concern as high as <0.20 ppm in or on pecans, EPA determined that the tolerance on pecans should be increased from 0.1 to 0.20 ppm. Also, the Agency believes that data can be translated from pecans to filberts, and that the tolerance on filbert should be decreased from 0.25 to 0.20 ppm. Therefore, the Agency is proposing in 40 CFR 180.213 to decrease the tolerance on ''filbert'' to 0.20 ppm, increase the tolerance on ''pecan'' to 0.20 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Also, in 40 CFR 180.213, EPA is proposing to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice, where the ''(N)'' designation means negligible residues.

In addition, in 40 CFR 180.213, EPA is proposing to revise commodity terminology for ''orange, sweet'' to read ''orange'' to conform to current Agency practice.

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104-170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions in follow-up to the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). The safety finding determination under section 408 of the FFDCA standard is discussed in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued Post-FQPA REDs for atrazine, ferbam, lindane, propachlor, and simazine, and TREDs for amitraz, and ethephon, whose REDs were both completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no

longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select Regulations and Proposed Rules and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.

2. There is a reasonable expectation that finite residues will exist.

3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this proposed rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

### *C. When do These Actions Become Effective?*

With the exception of certain tolerances for ferbam and lindane for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that the actions herein become effective on the date of publication of the final rule in the **Federal Register**. With the exception of the revocation of specific tolerances for ferbam and lindane, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. EPA is proposing an expiration/revocation date of October 27, 2007 for the ferbam tolerances on bean, cabbage, lettuce, and raspberry and an expiration/revocation date of October 2, 2009 for the lindane tolerances on the fat of cattle, goats, hops, horses, and sheep. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

## III. Are the Proposed Actions Consistent with International Obligations?

The tolerance actions in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by Section 408(b)(4) of the FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA Section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

## IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply,*

*Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or 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). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

**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 3, 2007.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be 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 180.114 is amended by revising paragraph (a) and adding text to paragraph (c) to read as follows:

### §180.114 Ferbam; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide ferbam (ferric dimethyldithiocarbamate), calculated as carbon disulfide, in or on food commodities as follows:

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Apple | 4.0[1] | None |
| Bean | 7.0[1] | 10/27/07 |
| Cabbage | 7.0[1] | 10/27/07 |
| Cherry | 4.0[1] | None |
| Cranberry | 4.0[1] | None |
| Fruit, citrus, group 10 | 4.0[1] | None |
| Grape | 4.0[1] | None |
| Lettuce | 7.0[1] | 10/27/07 |
| Nectarine | 4.0[1] | None |
| Peach | 4.0[1] | None |
| Pear | 4.0[1] | None |
| Raspberry | 7.0[1] | 10/27/07 |

[1] Some of these tolerances were established on the basis of data acquired at the public hearings held in 1950 (formerly § 180.101) and the remainder were established on the basis of pesticide petitions presented under the procedure specified in the amendment to the Federal Food, Drug, and Cosmetic Act by Public Law 518, 83d Congress (68 Stat.511)

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with regional registrations, as defined in § 180.1(m), is established for residues of the fungicide ferbam (ferric dimethyldithiocarbamate), calculated as carbon disulfide, in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Mango | 4.0[1] |

[1] This tolerance was established on the basis of data acquired at the public hearings held in 1950 (formerly §180.101) and the remainder was established on the basis of pesticide petitions presented under the procedure specified in the amendment to the Federal Food, Drug, and Cosmetic Act by Public Law 518, 83d Congress (68 Stat.511)

* * * * *

3. Section 180.133 is amended by revising the table in paragraph (a) to read as follows:

**§180.133 Lindane; tolerances for residues.**

(a) *General* * * *

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| Cattle, fat | 7.0 | 10/2/09 |
| Goat, fat | 7.0 | 10/2/09 |
| Hog, fat | 4.0 | 10/2/09 |
| Horse, fat | 7.0 | 10/2/09 |
| Sheep, fat | 7.0 | 10/2/09 |

* * * * *

4. Section 180.211 is amended by revising the section heading and paragraph (a) to read as follows:

**§180.211 Propachlor; tolerances for residues.**

(a) *General*. Tolerances are established for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites containing the *N*-isopropylaniline moiety, calculated as 2-chloro-*N*-isopropylacetanilide, in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.05 |
| Cattle, kidney | 0.2 |
| Cattle, meat | 0.02 |
| Cattle, meat byproducts, except kidney | 0.05 |
| Corn, field, forage | 3.0 |
| Corn, field, grain | 0.2 |
| Corn, field, stover | 1.0 |
| Corn, sweet, forage | 3.0 |
| Goat, fat | 0.05 |
| Goat, kidney | 0.2 |
| Goat, meat | 0.02 |
| Goat, meat byproducts, except kidney | 0.05 |
| Hog, fat | 0.02 |
| Hog, meat | 0.02 |
| Hog, meat byproducts | 0.02 |
| Horse, fat | 0.05 |
| Horse, kidney | 0.2 |
| Horse, meat | 0.02 |
| Horse, meat byproducts, except kidney | 0.05 |
| Milk | 0.02 |
| Sheep, fat | 0.05 |
| Sheep, kidney | 0.2 |
| Sheep, meat | 0.02 |
| Sheep, meat byproducts, except kidney | 0.05 |
| Sorghum, forage, forage | 8.0 |
| Sorghum, grain, forage | 8.0 |
| Sorghum, grain, grain | 0.25 |
| Sorghum, grain, stover | 12.0 |

* * * * *

5. Section 180.213 is amended by revising paragraph (a) to read as follows:

**§180.213 Simazine; tolerances for residues.**

(a) *General*. Tolerances are established for the combined residues of the herbicide simazine (2-chloro-4,6-bis(ethylamino)-s-triazine) and its two chlorinated degradates (2-amino-4-chloro-6-ethylamino-s-triazine and 2,4-diamino-6-chloro-s-triazine), the total residue to be measured in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Almond | 0.25 |
| Almond, hulls | 0.25 |
| Apple | 0.20 |
| Avocado | 0.20 |
| Blackberry | 0.20 |
| Blueberry | 0.20 |
| Cattle, meat | 0.03 |
| Cattle, meat byproducts | 0.03 |
| Cherry | 0.25 |
| Corn, field, forage | 0.20 |
| Corn, field, grain | 0.20 |
| Corn, field, stover | 0.25 |
| Corn, pop, grain | 0.20 |
| Corn, pop, stover | 0.25 |
| Corn, sweet, forage | 0.20 |
| Corn, sweet, kernel plus cob with husks removed | 0.25 |
| Corn, sweet, stover | 0.25 |
| Cranberry | 0.25 |
| Currant | 0.25 |
| Egg | 0.03 |
| Filbert | 0.20 |
| Goat, meat | 0.03 |
| Goat, meat byproducts | 0.03 |
| Grape | 0.20 |
| Grapefruit | 0.25 |
| Horse, meat | 0.03 |
| Horse, meat byproducts | 0.03 |
| Lemon | 0.25 |
| Loganberry | 0.20 |
| Milk | 0.03 |
| Nut, macadamia | 0.25 |
| Olive | 0.20 |
| Orange | 0.25 |
| Peach | 0.20 |
| Pear | 0.25 |
| Pecan | 0.20 |
| Plum | 0.20 |
| Raspberry | 0.20 |
| Sheep, meat | 0.03 |
| Sheep, meat byproducts | 0.03 |
| Strawberry | 0.25 |
| Walnut | 0.2 |

* * * * *

6. Section 180.220 is amended by revising paragraph (a) to read as follows:

**§180.220 Atrazine; tolerances for residues.**

(a) *General*. Tolerances are established for the combined residues of the herbicide atrazine (2-chloro-4-ethylamino-6-isopropylamino-s-triazine) and its chlorinated metabolites 2-amino-4-chloro-6-isopropylamino-s-triazine, 2-amino-4-chloro-6-ethylamino-s-triazine, and 2,4-diamino-6-chloro-s-triazine, in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.02 |
| Cattle, meat | 0.02 |
| Cattle, meat byproducts | 0.02 |
| Corn, field, forage | 15 |
| Corn, field, grain | 0.20 |
| Corn, field, stover | 0.5 |
| Corn, pop, forage | 1.5 |
| Corn, pop, grain | 0.20 |
| Corn, pop, stover | 0.5 |
| Corn, sweet, forage | 15 |
| Corn, sweet, kernel plus cob with husks removed | 0.20 |
| Corn, sweet, stover | 2.0 |
| Goat, fat | 0.02 |
| Goat, meat | 0.02 |
| Goat, meat byproducts | 0.02 |
| Grass, forage | 4.0 |
| Grass, hay | 4.0 |
| Guava | 0.05 |
| Horse, fat | 0.02 |
| Horse, meat | 0.02 |
| Horse, meat byproducts | 0.02 |
| Milk | 0.02 |
| Nut, macadamia | 0.20 |
| Sheep, fat | 0.02 |
| Sheep, meat | 0.02 |
| Sheep, meat byproducts | 0.02 |
| Sorghum, forage, forage | 15 |
| Sorghum, grain forage | 15 |
| Sorghum, grain, grain | 0.20 |
| Sorghum, grain, stover | 0.50 |
| Sugarcane, cane | 0.20 |
| Wheat, forage | 1.5 |
| Wheat, grain | 0.10 |
| Wheat, hay | 5.0 |
| Wheat, straw | 0.50 |

* * * * *

7. Section 180.287 is amended by revising paragraph (a) to read as follows:

**§180.287 Amitraz; tolerances for residues.**

(a) *General*. Tolerances are established for residues of the insecticide amitraz (*N*′-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino] methyl]]-*N*-methylmethanimidamide) and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent) in or on food commodities, as follows:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.1 |

| Commodity | Parts per million |
|---|---|
| Cattle, meat | 0.02 |
| Cattle, meat byproducts | 0.2 |
| Cotton, undelinted seed[1] | 1.0 |
| Hog, fat | 0.1 |
| Hog, kidney | 0.1 |
| Hog, liver | 0.1 |
| Hog, meat | 0.05 |
| Hog, meat byproducts | 0.3 |
| Milk | 0.03 |
| Milk, fat | 0.2 |
| Pear | 3.0 |

[1] There are no U.S. registrations on cotton, undelinted seed as of May 3, 2006.

* * * * *

8. Section 180.300 is amended by revising the table in paragraph (a) to read as follows:

**§180.300 Ethephon; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Apple | 5.0 |
| Apple, juice | 10.0 |
| Barley, bran | 5.0 |
| Barley, grain | 2.0 |
| Barley, straw | 10.0 |
| Blackberry | 30.0 |
| Blueberry | 20.0 |
| Cantaloupe | 2.0 |
| Cattle, fat | 0.02 |
| Cattle, kidney | 1.0 |
| Cattle, meat | 0.02 |
| Cattle, meat byproducts, except kidney | 0.2 |
| Cherry | 10.0 |
| Coffee, bean, green | 0.5 |
| Cotton, gin byproducts | 180.0 |
| Cotton, undelinted seed | 6.0 |
| Cucumber | 0.1 |
| Egg | 0.002 |
| Filbert | 0.80 |
| Goat, fat | 0.02 |
| Goat, kidney | 1.0 |
| Goat, meat | 0.02 |
| Goat, meat byproducts, except kidney | 0.2 |
| Grape | 2.0 |
| Grape, raisin | 12.0 |
| Hog, fat | 0.02 |
| Hog, kidney | 1.0 |
| Hog, meat | 0.02 |
| Hog, meat byproducts, except kidney | 0.2 |
| Horse, fat | 0.02 |
| Horse, kidney | 1.0 |
| Horse, meat | 0.02 |
| Horse, meat byproducts, except kidney | 0.2 |
| Milk | 0.01 |
| Nut, macadamia | 0.5 |
| Pepper | 30.0 |
| Pineapple | 2.0 |
| Poultry, fat | 0.02 |
| Poultry, liver | 0.05 |
| Poultry, meat | 0.01 |
| Poultry, meat byproducts, except liver | 0.01 |
| Sheep, fat | 0.02 |
| Sheep, kidney | 1.0 |
| Sheep, meat | 0.02 |
| Sheep, meat byproducts, except kidney | 0.2 |
| Sugarcane, molasses | 1.5 |
| Tomato | 2.0 |
| Walnut | 0.5 |
| Wheat, bran | 5.0 |
| Wheat, germ | 5.0 |
| Wheat, grain | 2.0 |
| Wheat, middlings | 5.0 |
| Wheat, shorts | 5.0 |
| Wheat, straw | 10.0 |

* * * * *

[FR Doc. E7–11324 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2, 90, and 95

**[WP Docket No. 07–100, FCC 07–85]**

### Amendment of Part 90 of the Commission's Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) initiates a proceeding to propose miscellaneous changes to its rules that govern new and existing wireless technologies, devices, and services. Specifically, the Commission seeks comment regarding particular changes to its rules governing the 4.9 GHz band and the Wireless Medical Telemetry Service which shares spectrum. The Commission also solicits comment on whether or not to revise or eliminate provisions that are duplicative, outmoded or otherwise unnecessary.

**DATES:** Submit comments on or before August 13, 2007, and reply comments are due on or before September 11, 2007.

**ADDRESSES:** You may submit comments, identified by WP Docket No. 07–100; FCC 07–85, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Rodney P. Conway, at *Rodney.Conway@FCC.gov*, Wireless Telecommunications Bureau, (202) 418–2904, or TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of *Proposed Rulemaking* (*NPRM*) in WP Docket No. 07–100, FCC 07–85, adopted on May 9, 2007, and released May 14, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. Part 90 contains the rules for both the Private Land Mobile Radio (PLMR) Services and certain Commercial Mobile Radio Services (CMRS). PLMR licensees generally do not provide for-profit communications services. Some examples of PLMR licensees are public safety agencies, businesses that use radio only for their internal operations, utilities, transportation entities, and medical service providers. CMRS licensees, by comparison, do provide for-profit communications services, such as paging and Specialized Mobile Radio services that offer customers communications that are interconnected to the public switched network.

2. *Frequency Coordination and Related Matters.* Pursuant to § 90.621 of the Commission's rules, certain licensees are permitted to modify their licenses to authorize CMRS operations instead of PLMR operations, or vice versa. Currently, such applications require frequency coordination. We propose to eliminate the frequency coordination requirement for such applications. We ask for comment on this proposal. We also invite commenters to suggest other types of applications for which frequency coordination should no longer be required, such as applications to modify

a license to reduce the authorized bandwidth.

3. *Paging on Public Safety VHF Frequencies.* We seek comment on whether we should place any restrictions on paging operations on VHF public safety frequencies, especially those frequencies reserved under the rules for mutual aid/interoperability communications. Finally, we ask whether we should eliminate paging operations in the VHF public safety frequencies altogether.

4. *Cross-Banding.* Section 90.243(b)(1) of the Commission's rules state that public safety medical service systems operating in the 150–160 MHz band are permitted to be cross-banded in order to communicate with systems operating in the 450–470 MHz band. All public safety licensees may operate cross-band repeaters under the general mobile relay rules in § 90.243. Therefore, we propose to modify this section to specifically state that cross-band repeaters are permitted for all public safety systems. We seek comment on this proposal.

5. *Mobile Repeaters.* Section 90.247(b) of the Commission's rules states that for frequencies below 450 MHz in the Industrial/Business pool, only low power frequencies (where power is limited to two watts) may be assigned for use by mobile repeaters and associated hand-held units, when separate frequencies are assigned for that purpose. After the part 90 radio services were consolidated, however, a greater number of high-power 150 MHz channels became available for use by Business and Special Industrial Radio (B/ILT) Services licensees and the number of low-power 150 MHz band frequencies available for mobile repeater operations was reduced when the Commission reallocated five channels to the part 95 Multi-Use Radio Service. In light of these developments, we seek tentatively conclude that restricting mobile repeaters to low-power channels is no longer necessary. We seek comment on this proposal.

6. *Expired Licenses.* The Land Mobile Communications Council (LMCC) has notified the Commission that all part 90 frequency coordinators have now agreed not to coordinate frequencies associated with an expired license until the frequency becomes available for reassignment. LMCC requests the Commission's cooperation in enforcing this policy. We seek comment on whether the rules should be amended to prohibit the coordination of frequencies associated with expired licenses until those frequencies are deleted from the ULS database.

7. *Multiple Licensing.* In 1999, the Commission sought comment on whether to retain the multiple licensing rules. Since then, however, changes in the Commission's rules have created new means for multiple entities to share facilities. The availability and coverage of commercial communications systems has increased in recent years. Also, some PLMR licensees now may convert their stations to CMRS operation. In addition, users now may obtain spectrum in secondary market transactions. These developments lead us to revisit the Commission's conclusion, in 2000, that multiple licensing should be retained. Against this background, we request comment on whether multiple licensing has become unnecessary and administratively burdensome, considering the options discussed above.

8. *Transit Systems and Toll Roads.* Under the current rules, publicly-operated transit systems, as governmental entities, are eligible to hold authorizations in the Public Safety Pool. However, not all metropolitan transit systems are publicly-owned. We seek comment on whether 47 CFR 90.20 should be amended to allow privately-run metropolitan transit systems to use frequencies in the Public Safety Pool. When toll roads are operated by government entities, the operator is eligible to hold an authorization in the Public Safety Pool. A private entity that takes over operation of a toll road ordinarily is not eligible for that Public Safety Pool license. We seek comment on how best to administer licenses associated with toll roads that are transferred from government to private operation.

9. *Industrial/Business Pool Eligibility.* Section 90.35 of the Commission's rules permits licensing of entities engaged in ''[t]he operation of a commercial activity,'' and does not state that government entities cannot hold licenses in the Industrial/Business Pool for these activities. We seek comment on whether there is any need to amend 47 CFR 90.35 to state explicitly that government entities engaged in commercial enterprises are eligible for Industrial/Business Pool frequencies. We also seek comment on a request filed by National Public Safety Telecommunications Council (NPSTC) requesting that the rule be amended to permit government surveying operations to utilize Industrial/Business Pool itinerant frequencies because modern surveying equipment is manufactured to operate only on Industrial/Business Pool frequencies.

10. *Disturbance of AM Broadcast Station Antenna Patterns.* The Commission's rules for other services contain requirements for detuning antenna structures constructed near an AM transmitting antenna. We seek comment on the need, if any, for similar provisions in part 90 of the Commission's rules.

11. *FB8T Station Class.* The Commission established a new station class code, FB8, to identify those trunked radio systems' base and mobile relay channels that are not subject to a monitoring requirement because the applicant/licensee has obtained the necessary consent from co-channel licensees or has exclusive use of the channel. Authorizing temporary base stations anywhere within the licensee's authorized operating area could allow the licensee to expand the contour of its unmonitored operations into areas where it does not have exclusivity potentially resulting in interference to other licensees. Consequently, we no longer issue authorizations for systems with a station class of FB8T. We propose to renew existing FB8T authorizations with a station class code of FBT (temporary base), which would make it clear that these operations are subject to the monitoring requirement. We seek comment on this proposal, and on whether any corresponding amendment to part 90 is necessary.

12. *Reorganization of part 90.* The PLMR and CMRS operations governed under part 90 are similar in many respects, thus it may be appropriate to continue to include them in the same rule part. On the other hand, the differences among the services may be sufficient to warrant them being administered under different rule parts. For example, it may be appropriate to move the part 90 CMRS rules to parts 22 or 27, or to move the rules governing the Public Safety Pool to a separate rule part. Another option is to keep the rules in part 90, but reorganize them to minimize confusion and reduce regulatory burdens. We ask commenting parties for an analysis of the comparative costs and benefits associated with the foregoing alternatives.

13. *4.9 GHz Band.* We seek comment on M/A–COM's proposal to afford primary status to certain permanent fixed links in the 4.9 GHz band. Commenters should address whether, given the limited amount of spectrum in the 4.9 GHz band, permitting fixed operations on a primary basis may result in severely limiting the spectral availability and reliability of both permanent and *ad hoc* mobile networks. In addition, we propose to amend 47 CFR 90.1215 to reflect the revised measurement procedures subsequently adopted by the Commission for devices

that use digital modulation techniques and are regulated by part 15 of the rules. We find that measurement procedures should remain consistent between the part 15 rules and the 4.9 GHz band rules, given our understanding that manufacturers are considering technologies similar to those covered by part 15 for use in the 4.9 GHz band. We request comment on this proposal.

14. *Wireless Medical Telemetry Service Issues.* We seek comment on ASHE's proposed rule changes. We seek comment on whether the rules should expressly set forth the terms of the agreement, or if it is sufficient to cross-reference the coordination plan, as ASHE proposes. Although ASHE and LMCC support codifying the coordination plan, we also seek comment on whether this is necessary or appropriate, or if codification of the plan would impede ASHE and LMCC in the event that they agree in the future to modify their procedures. Finally, we note that the WMTS rules do not explicitly permit WMTS systems to operate on a secondary basis in the portion(s) of the 1427–1432 MHz band where non-medical telemetry is primary. The Wireless Telecommunications Bureau has received both a request that it clarify that such operations are permitted, and a request that it clarify that such operations are not permitted. We seek comment on how, or if, we should amend our rules with respect to this issue.

## I. Procedural Matters

### *A. Ex Parte Rules—Permit-But-Disclose Proceeding*

15. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

### *B. Comment Dates*

16. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 13, 2007 and reply comments on or before September 11, 2007. All filings related to this *NPRM* should refer to WT Docket No. 07–100.

17. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

18. Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

19. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

20. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

21. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

22. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

23. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

24. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

25. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

26. *Availability of documents.* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, may be reached by e-mail at *fcc@bcpiweb.com* or via BCPI's Web site at *http://www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

### *C. Paperwork Reduction Act*

27. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

## II. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* as provided in paragraph 49 of the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, a copy of the *NPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register**.

*Need for, and Objectives of, the Proposed Rules*

29. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for licensees to comprehend and understand. We believe it appropriate to review all of our regulations relating to administering Private Land Mobile Radio (PLMR) Services to determine which regulations can be clarified, streamlined or eliminated. In the *NPRM*, we seek comment on miscellaneous rule amendments that are intended to clarify part 90 of the Commission's rules. In addition, the *NPRM* seeks comment on eliminating certain regulatory requirements contained in part 90 of the Commission's rules. The *NPRM* also seeks comment regarding changes to the rules governing the part 95 Wireless Medical Telemetry Service, to clarify those rules and implement a joint coordination agreement among the relevant frequency coordinators. We also solicit comment on other potential part 90 rules changes, including suggestions to revise or eliminate provisions that are duplicative, outmoded or otherwise unnecessary.

*Legal Basis for Proposed Rules*

30. Authority for issuance of this item is contained in sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' *See* 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *See* Small Business Act, 5 U.S.C. 632 (1996). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *See* 5 U.S.C. 601(4). Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes proposed in this *NPRM*.

32. *Governmental Entities*. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002). A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *See* 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. *See* Independent Sector, The New Nonprofit Almanac & Desk Reference (2002). The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' *See 5 U.S.C. 601(5)*. Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 272, Table 415. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. Thus, we estimate that most governmental jurisdictions are small.

33. *Public Safety Radio Licensees*. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. *See* subparts A and B of part 90 of the Commission's rules, 47 CFR 90.1–90.22. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in radiotelephone communications employing no more that 1,500 persons. *See* 13 CFR 121.201, NAICS code 517212. There are a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

34. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules do, however, contain a size standard for small radiotelephone (wireless) companies which encompasses, business entities engaged in radiotelephone communications employing no more that 1,500 persons. *See* 13 CFR 121.201, NAICS code 517212. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz. *See* Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

35. *Frequency Coordinators*. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' *See* 13 CFR 121.201, NAICS code 517212. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. *See* 13 CFR 121.201, NAICS code 517211. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. *See* 13 CFR 121.201, NAICS code 517212. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

36. *RF Equipment Manufacturers*. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in

manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' *See* 13 CFR 121.201, NAICS code 334220. The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. *See* U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005). Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

37. *Hospitals, Nursing Care Facilities, and Other Residential Care Facilities.* The SBA has developed small business size standards for these three categories and other, related categories. For the commercial census category of General Medical and Surgical Hospitals, the SBA deems an entity to be small if it has $31.5 million or less in annual revenues. *See* 13 CFR 121.201, NAICS code 622110. Census Bureau data for 2002 show that there were 3,200 firms in this category that operated for the entire year. *See* U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 4, NAICS code 622110 (issued Nov. 2005). Of this total, 1,313 firms had revenues of under $25 million, and 471 had revenues of $25 million to $49, 999,999. Thus, in this category, over 41 percent of the firms can be considered small. For the category of Nursing Care Facilities, the SBA deems an entity to be small if it has $12.5 million or less in annual revenues. *See* 13 CFR 121.201, NAICS code 623110. Census Bureau data for 2002 show that there were 7,826 firms in this category that operated for the entire year. Of this total, 6,594 firms had revenues of under $10 million, and 871 had revenues of $10 million to $24, 999,999. Thus, in this category, the majority of firms can be considered small. For the category of Other Residential Care Facilities, the SBA deems an entity to be small if it has $6.5 million or less in annual revenues. *See* 13 CFR 121.201, NAICS code 623990. Census Bureau data for 2002 show that there were 3,131 firms in this category that operated for the entire year. *See* U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 4, NAICS code 623990 (issued Nov. 2005). Of this total, 2,774 firms had revenues of under $5 million, and 202 had revenues of $5 million to $9,999,999. Thus, in this category, the majority of firms can be considered small.

38. *Aviation and Marine Radio.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. *See* 13 CFR 121.201, NAICS code 517212. Also, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them, along with the majority of other aviation and marine radio licensees, qualify as ''small'' businesses under the above special small business size standards.

A. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

39. There are no projected reporting, recordkeeping or other compliance requirements.

B. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c).

41. We believe the changes proposed in this *NPRM* will promote flexibility and more efficient use of the spectrum, reduce administrative burdens on both the Commission and licensees, and allow licensees to better meet their communication needs. In this *NPRM*, we seek comment on the proposals to modify the rules. Many of the proposed changes constitute clarification of existing requirements or elimination of existing limitations. Among other proposals, we seek comment on whether multiple licensing is obsolete and whether we should eliminate this administratively burdensome option in light of the various other services that are now more widely available. We also are considering the alternative of retaining the multiple licensing rules. The *NPRM* also seeks comment on the feasibility of including protection to broadcast AM station antenna patterns in part 90 of our rules, or whether such a rule is unnecessary. We seek comment on our proposal to reissue licenses that contain an invalid station class of FB8T as they come due for renewal with an appropriate station class of FBT (temporary base), indicating that operations are subject to monitoring.

C. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

42. None.

## III. Ordering Clauses

43. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *NPRM* is *hereby adopted.*

44. *Notice is hereby given* of the proposed regulatory changes described in this *NPRM* and comment is sought on these proposals.

45. The Commission's Consumer and Governmental Affairs Bureau, Reference

Information Center, *shall send* a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 2, 90, and 95**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 90, and 95 to read as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 by revising the entry for ''US350'' to read as follows:

**§ 2.106 Table of Frequency Allocations.**

* * * * *

US350 In the band 1427–1432 MHz, Federal use of the land mobile service and non-Federal use of the fixed and land mobile services is limited to telemetry and telecommand operations as described further:

| Location (see § 90.259(b)(4) of this chapter for a detailed description) | 1427–1429 MHz 1431.5–1432 MHz | 1429–1431.5 MHz |
|---|---|---|
| Austin/Georgetown, Texas, Battle Creek, Michigan, Detroit, Michigan, Pittsburgh, Pennsylvania, Richmond/Norfolk, Virginia, Spokane, Washington, Washington, DC metropolitan area | Non-Government land mobile service is limited to telemetry and telecommand operations. Government and non-Government medical telemetry and telecommand use is permitted on a secondary basis. | Government and non-Government land mobile service is limited to medical telemetry and telecommand operations. Non-Government telemetry and telecommand use is permitted on a secondary basis. |
| | 1427–1429.5 MHz | 1429.5–1432 MHz |
| Rest of U.S. | Government and non-Government land mobile service is limited to medical telemetry and telecommand operations. Non-Government telemetry and telecommand use is permitted on a secondary basis. | Non-Government land mobile service is limited to telemetry and telecommand operations. Government and non-Government medical telemetry and telecommand use is permitted on a secondary basis. |

* * * * *

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

4. Amend § 90.20 by adding paragraph (a)(2)(xiv) to read as follows:

**§ 90.20 Public Safety Pool.**

(a) * * *

(2) * * *

(xiv) Persons or organizations providing local or regional multiple-occupancy-vehicle passenger services over regular routes under contract or similar arrangement with a governmental entity for the transmission of messages pertaining to either the efficient operation of the service or the safety or general welfare of the passengers they are engaged in transporting. Each transit system operator may be authorized to operate one base station and a number of mobile units not in excess of the total of the number of passenger vehicles and maintenance vehicles regularly engaged in the operation. Additional base stations or mobile units will be authorized only in exceptional circumstances when the applicant can show a specific need.

* * * * *

5. Amend § 90.175 by adding paragraph (j)(18) to read as follows:

**§ 90.175 Frequency coordinator requirements.**

(j) * * *

(18) Applications requesting to modify a license to authorize commercial operations pursuant to § 90.621(e)(2), or to reverse such a modification, if there is no change in technical parameters.

6. Amend § 90.176 by revising the section heading and paragraph (d) to read as follows:

**§ 90.176 Coordinator notification requirements on frequencies below 512 MHz, at 764–776/794–806 MHz, or at 1427–1432 MHz.**

* * * * *

(d) *Frequencies in the 1427–1432 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to the WMTS frequency coordinator designated in § 95.1112 of this chapter and to all other frequency coordinators who are also certified to coordinate that frequency. In addition, the frequency coordinator must ensure compliance with all coordination requirements incorporated in the joint WMTS-part 90 coordination plan filed in WT Docket No. 02–8 on August 18, 2004.

* * * * *

7. Amend § 90.243 by revising paragraph (b)(1) to read as follows:

**§ 90.242 Mobile relay stations.**

(b) * * *

(1) In the Public Safety Pool, systems that operate in the 150 MHz band are permitted to be cross-banded for mobile and central stations operations with mobile relay stations authorized to operate in the 450 and 800 MHz bands.

* * * * *

**§ 90.247 [Amended]**

8. Amend § 90.247 by removing and reserving paragraph (b).

9. Amend § 90.259 by revising paragraphs (b)(3) and (b)(4)(ii) to read as follows:

**§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.**

* * * * *

(b) * * *

(3) All operations authorized under this section in the 1429.5–1432 MHz

band are primary in status (and Wireless Medical Telemetry Service operations are secondary) except in the locations specified in paragraph (b)(4) of this section. At the locations specified in paragraph (b)(4) of this section, all operations authorized under this section are primary in status (and Wireless Medical Telemetry Service operations are secondary) in the 1427–1429 MHz and 1431.5–1432 MHz bands.

(4) * * *

(ii) Washington, DC metropolitan area—Counties of Montgomery, Prince George's and Charles in Maryland; Arlington, Prince William, Fauquier, Loudon, and Fairfax, and Cities of Alexandria, Falls Church, Fairfax, Manassas and Manassas Park in Virginia; and District of Columbia.

* * * * *

10. Amend § 90.1215 by revising paragraphs (a), (b), and (c), and by adding paragraph (e) to read as follows:

**§ 90.1215 Power limits.**

* * * * *

(a) The maximum conducted output power should not exceed:

| Channel bandwidth (MHz) | Low power peak transmitter power (dBm) | High power peak transmitter power (dBm) |
|---|---|---|
| 1 | 7 | 20 |
| 5 | 14 | 27 |
| 10 | 17 | 30 |
| 15 | 18.8 | 31.8 |
| 20 | 20 | 33 |

High power devices are also limited to a peak power spectral density of 20 dBm per one MHz. High power devices using channel bandwidths other than those listed above are permitted; however, they are limited to a maximum conducted power spectral density of 20 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the maximum conducted output power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi. However, high power point-to-point and point-to-multipoint operation (both fixed and temporary-fixed rapid deployment) may employ transmitting antennas with directional gain up to 26 dBi without any corresponding reduction in the maximum conducted output power or spectral density. Corresponding reduction in the transmit power and peak power spectral density should be the amount in decibels that the directional gain of the antenna exceeds 26 dBi.

(b) Low power devices are also limited to a peak power spectral density of 8 dBm per one MHz. Low power devices using channel bandwidths other than those listed above are permitted; however, they are limited to a peak power spectral density of 8 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the maximum conducted output power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi.

(c) The maximum conducted power is measured as a conducted emission over any interval of continuous transmission calibrated in terms of an RMS-equivalent voltage. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true maximum conducted power measurement conforming to the definitions in this paragraph for the emission in question.

* * * * *

(e) The ratio of the peak excursion of the modulation envelope (measured using a peak hold function) to the maximum conducted output power shall not exceed 13 dB across any 1 MHz bandwidth or the emission bandwidth whichever is less.

11. Add § 90.XXX to read as follows:

**§ 90.XXX Disturbance of AM broadcast station antenna patterns.**

Public Safety Pool and Industrial/Business Pool licensees that construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for measures necessary to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the FCC for the AM station, if the disturbance occurred as a result of such construction or modification.

(a) *Non-directional AM stations.* If tower construction or modification is planned within 1 kilometer (0.6 mile) of a non-directional AM broadcast station tower, the Public Safety Pool or Industrial/Business Pool licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The Public Safety Pool or Industrial/Business Pool licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.

(b) *Directional AM stations.* If tower construction or modification is planned within 3 kilometers (1.9 miles) of a directional AM broadcast station array, the Public Safety Pool or Industrial/Business Pool licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The Public Safety Pool or Industrial/Business Pool licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper performance of the AM station array.

## PART 95—PERSONAL RADIO SERVICES

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

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

13. Revise § 95.630 to read as follows:

**§ 95.630 WMTS transmitter frequencies.**

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz
1395–1400 MHz
1427–1432 MHz (see § 90.259(b) of this part regarding where WMTS operations are primary in status, and where they are secondary to part 90 operations)

14. Revise § 95.1101 to read as follows:

**§ 95.1101 Scope.**

This subpart sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz frequency bands.

15. Amend § 95.1113 by revising paragraphs (b)(1), (b)(5), and (b)(6) to read as follows:

**§ 95.1113 Frequency coordinator.**

* * *

(b) * * *

(1) Review and process registration requests submitted by authorized health cares providers as required in § 95.1111;

* * * * *

(5) Upon receipt of a registration request for WMTS equipment operating in the 1427–1432 MHz band, notify all part 90 frequency coordinators of the intended activation in accordance with the joint WMTS-part 90 coordination plan filed in WT Docket No. 02–8 on August 18, 2004. The part 90 frequency coordinators shall, in turn, determine potentially affected part 90 licensees and notify those part 90 licensees operating in the 1427–1432 MHz band in accordance with § 90.259 of this chapter of their obligation to ensure compliance with the field strength limit of § 90.259(b)(11) of this chapter, as measured at the WMTS site.

(6) Upon receipt of a registration request for WMTS equipment operating in the 1395–1400 MHz band, notify each party licensed to operate in the 1392–1395 MHz band in the applicable geographic area pursuant to subpart I of part 27 of this chapter of the need to comply with the field strength limit set forth in § 27.804 of this chapter.

[FR Doc. E7–11221 Filed 6–12–07; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 07–2194; MB Docket No. 07–107; RM–11330]**

### Radio Broadcasting Services; Bokchito and Clayton, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Charles Crawford (''Petitioner'') proposing the allotment of Channel 241A at Bokchito, Oklahoma, as a first local service. The proposed coordinates for Channel 241A at Bokchito are 33–55–00 NL and 96–06–00 WL with a site restriction of 11.8 km (7.4 miles) south of town reference. To accommodate the proposed allotment at Bokchito, Petitioner proposes to substitute Channel 263A for vacant Channel 241A at Clayton, Oklahoma. The proposed coordinates for Channel 263A at Clayton are 34–32–48 NL and 95–29–46 WL with a site restriction of 14 km (8.7 miles) west of town reference.

**DATES:** Comments must be filed on or before July 16, 2007, and reply comments on or before July 31, 2007.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner and her counsel, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Gene A. Bechtel, Esquire, Law Office of Gene Bechtel, 1050 17th Street, NW., Suite 600, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Helen McLean, Media Bureau, (202) 418–2738.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 07–107, adopted May 23, 2007, and released May 25, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, 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.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *See* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject of Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR Sections 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

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

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 241A and by adding Channel 263A at Clayton and by adding Bokchito, Channel 241A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 07–2901 Filed 6–12–07; 8:45 am]

BILLING CODE 6712–07–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Colorado River Cutthroat Trout as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of a 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding for a petition to list the Colorado River cutthroat trout (CRCT) (*Oncorhynchus clarkii pleuriticus*) as a threatened species throughout its range in the United States, pursuant to the Endangered Species Act of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that listing the CRCT as either threatened or endangered is not warranted at this time. We ask the public to continue to submit to us any new information that becomes available

concerning the status of or threats to the subspecies. This information will help us to monitor and encourage the ongoing conservation of this subspecies.

**DATES:** The finding in this document was made on June 5, 2007.

**ADDRESSES:** Data, information, comments, or questions regarding this notice should be sent to CRCT, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506. Once the complete administrative file for this finding is compiled, it will be available for inspection, by appointment, and during normal business hours, at the above address. The petition finding, related **Federal Register** notices, the Court Order, and other pertinent information, may be obtained on line at *http://mountain-prairie.fws.gov/endspp/fish/CRCT/*.

**FOR FURTHER INFORMATION CONTACT:** Patty Schrader Gelatt, Western Colorado Ecological Services Office (see **ADDRESSES**), by telephone at (970) 243–2778, by facsimile at (970) 245–6933, or by electronic mail at *patty_schradergelatt@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register**.

On December 16, 1999, we received a formal petition (dated December 9, 1999) to list the CRCT as threatened or endangered in its occupied habitat within its known historic range, in accordance with provisions in section 4 of the Act. The petition was filed by the Center for Biological Diversity (CBD), the Biodiversity Legal Foundation, Biodiversity Associates, Ancient Forest Rescue, Southwest Trout, Wild Utah Forest Campaign, Colorado Wild, and Mr. Noah Greenwald.

## Biology and Distribution

The CRCT is the only salmonid (i.e., salmon, trout, and their close relatives) native to the upper Colorado River basin, and is 1 of 14 subspecies of cutthroat trout recognized by Behnke (1992, pp. 139–145; 2002, pp. 143–147) that are native to interior regions of western North America. It has red or orange slash marks on both sides of the lower jaws and relatively large spots concentrated on the posterior part of the body. Sexually mature males exhibit brilliant colors; the ventral region can be bright crimson, with red along the lateral line, and the lower sides of the body are typically golden yellow (Behnke 1992, pp. 139–145).

The CRCT historically occupied portions of the Colorado River drainage in Wyoming, Colorado, Utah, New Mexico, and likely in extreme northeastern Arizona (Behnke 1992, pp. 139–145). Its original distribution probably included portions of larger streams, such as the Green, Yampa, White, Colorado, and San Juan Rivers. Behnke and Zarn (1976, p. 15) suggested this subspecies was absent from the lower reaches of many large rivers because of summer thermal barriers. The CRCT still occurs throughout its historic range, but remaining populations now occur mostly in headwater streams and lakes.

The CRCT Conservation Team is composed of biologists from Wyoming Game and Fish Department (WGFD), Utah Division of Wildlife Resources (UDWR), Colorado Division of Wildlife (CDOW), U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), and the Service. The CRCT Conservation Team recently completed a rangewide status report (Hirsch et al. 2006) that describes the current rangewide status of CRCT in the United States. The report summarized information provided by 48 fisheries professionals from Colorado, Utah, Wyoming, and New Mexico, including State wildlife agencies, USFS, BLM, and the Service (Hirsch et al. 2006, p. 1). Specific protocols were developed and the information was assembled in a Geographic Information System (GIS) database. A peer review was conducted on the report by five recognized experts in the field of fishery biology, conservation biology, and/or genetics. The results of the peer review found that the document provided sound scientific data to use as the basis of our 12-month finding.

An analysis of probable historic distribution was provided in this status report (Hirsh et al. 2006, pp. 9–10). Historic distribution was based on habitat thought to be occupied around 1800 AD. The determination of occupation in this time period was based on elevation, slope aspect, barriers that would preclude fish, and expertise of fishery biologists familiar with each watershed. The analysis identified 34,417 kilometers (km) (21,386 miles [mi]) of stream habitat as having the potential to have been historically occupied. The historically occupied habitat was identified in each State as follows: Colorado—21,911 km/13,615 mi (63.6 percent); Utah—5,576 km/3,465 mi (16.2 percent); Wyoming—6,735 km/4,185 mi (19.6 percent); New Mexico—195 km/121 mi (0.6 percent). Scientists contacted regarding historical occurrence of CRCT in Arizona believe the drainages in the upper Colorado River basin in Arizona did not historically support CRCT (Hirsch et al. 2006, p. 2). Some hydrologic units were excluded from historic range, because the habitat was thought to be unsuitable due to extreme conditions or the habitats were thought to be devoid of fish.

Current distribution of CRCT is approximately 14 percent of probable historically occupied stream miles (Hirsch et al. 2006, p. 12). Approximately 1 percent (360 km (224 mi)) of currently occupied habitat is outside of areas determined to be historic habitat by Hirsh et al. (2006, p. 12). These populations are thought to be outside of the historic range because they are above historic barriers (natural waterfalls) where it is believed fish did not occur historically. These populations have been established by stocking CRCT above historic barriers.

The CRCT currently occupy 4,863 km (3,022 mi) of habitat; 2,187 km (1,359 mi) in Colorado, 1,788 km (1,111 mi) in Utah, and 888 km (552 mi) in Wyoming (Hirsch et al. 2006, p. 12). The CRCT are well distributed throughout their range in eight watershed-based Geographic Management Units (GMUs) (Figure 1). It should be noted that in earlier assessments 14 GMUs were identified as including current populations of CRCT; however, elimination of State boundaries in the most recent assessment reduced the number of GMUs, providing a more watershed-based approach. Reducing the number of GMUs does not indicate a reduction in the geographic area where CRCT occur (CRCT Conservation Team 2006a, pp. 7–8). Within each GMU, streams are

identified to the 4th level hydrologic unit and assigned a hydrologic unit code (HUC). The CRCT occupies some habitat in 42 of the 51 HUCs. The CRCT is not known to occur in New Mexico and is absent from nine HUCs within its historic range: Upper Colorado—Kane Springs, Upper Green—Slate, Big Sandy, Vermillion, Middle San Juan, Chaco, Mancos, Lower San Juan—Four Corners, and Montezuma.

Table 1 shows kilometers of currently occupied habitat in each GMU. The Upper Green River GMU and the Lower Green River GMU have the greatest extent of kilometers of currently occupied habitat for CRCT. The Upper Colorado River GMU and the Yampa River GMU also contain a substantial portion of occupied habitat. Some GMUs may not have as much habitat because they are smaller river drainages, such as the Dolores River, and others may be mostly lower elevation with less trout habitat, such as the Lower Colorado River GMU.

The CRCT rangewide status report (Hirsh et al. 2006, p. 29) identified 285 stream populations as conservation populations (Figure 2). Of the 285 conservation populations, 153 are considered core populations, meaning that they contain genetically pure Colorado River cutthroat trout. A conservation population is defined, per the States' position paper on Genetic Considerations Associated with Cutthroat Trout Management (UDWR 2000, pp. 1–9), as one that is either genetically unaltered (i.e., a core population) or one that may be slightly introgressed due to past hybridization (typically less than 10 percent) yet has attributes worthy of conservation. Therefore, conservation populations include both core populations (genetically pure), and populations that are less than 10 percent introgressed with other subspecies of cutthroat trout.

We conducted our analysis on conservation populations because we found that Colorado River cutthroat trout with less than 10 percent introgression still express important behavioral, life-history, or ecological adaptations of the indigenous populations within the range of the subspecies, and remain valuable to the overall conservation and survival of the subspecies (Campton and Kaeding 2005, pp. 1323–1325).

Hybridization is an important concern for CRCT populations. An introgressed population results when a nonnative species or subspecies is introduced into or invades the CRCT habitat, the two species then interbreed (i.e., hybridize), and the resulting hybrids themselves survive and reproduce. If the hybrids backcross with one or both of the parental species, genetic introgression occurs. Continual introgression can eventually lead to the loss of genetic identity of one or both parent species, thus resulting in a ''hybrid swarm'' consisting entirely of individual fish that often contain variable proportions of genetic material from both of the parental species.

We have adopted the States' standards and consider all core and conservation populations, as defined under these standards and as described by Hirsch et al. (2006, p. 29), to be CRCT for purposes of this status review. Because the categories are nested, the term ''conservation population'' includes the ''core populations,'' and we refer to them collectively as ''conservation populations'' in the remainder of this document.

The greatest number of conservation populations occur in the Upper Green (76 populations) and Upper Colorado (75 populations) GMUs, occupying 1,532 km (952 mi) (Table 1). Most other conservation populations occur in the Yampa (53 populations), Lower Green (26 populations) and Gunnison (25 populations) GMUs, occupying 1,188 km (738 mi). Smaller numbers of conservation populations occur in the Lower Colorado (14 populations), San Juan (12 populations), and Dolores (4 populations) GMUs, occupying 170 km (106 mi) (Hirsch et al. 2006, p. 32). There are no conservation populations in Arizona or New Mexico.

The 2006 Conservation Strategy lists 41 existing conservation populations in 455 hectares (1,123 acres) of lake habitat in 6 of the GMUs (CRCT Coordination Team 2006a, p. 6). The protocol used in the rangewide status report was not designed to address lake populations (Hirsch et al. 2006, p. iv). However, during the analysis, when a lake was connected to occupied stream habitat, it was included as stream miles in the rangewide status report, and 18 of the 41 lakes were included as 11 stream kilometers (7 stream miles). Lake populations are considered an important component in the conservation of CRCT, and some lakes are specifically designated to preserve genetically pure populations (CRCT Coordination Team 2006a, p. 17).

While the Hirsch et al. (2006) report did not specifically analyze population trends, it gave some examples of previous assessments and the general portrayal of the previous status of the subspecies. For example, Binns (1977, pp. 7–16) found 40 streams in Wyoming occupied by CRCT, with 12 of those streams occupied by fish he considered genetically pure. The 2006 report identifies 85 conservation populations in Wyoming. The CRCT Conservation Team produced reports in 1998, 2001, and 2003 that show stream conservation populations rangewide have increased from 161 populations in 1998 to 286 populations in 2003 and lake populations increased from 12 populations in 1998 to 41 populations in 2003 (Hirsch et al. 2006, p. 62). In recent years more populations have been discovered, and other populations have been expanded or restored. Also, populations that previously were considered hybridized were found through genetic testing to be eligible to be added to the list of conservation populations.

**Previous Federal Actions**

On December 16, 1999, we received a formal petition from the CBD and others to list the CRCT as threatened or endangered. On January 12, 2000, we notified CBD that we could not immediately address the petition because of other higher priority listing activities. In October 2000, CBD filed a complaint in the U.S. District Court for the District of Columbia alleging that we had failed to make a timely 90-day finding. We completed the 90-day review process and on April 20, 2004, published a finding in the **Federal Register** (69 FR 21151) that determined the petition failed to present substantial information indicating that listing this subspecies may be warranted.

After our 90-day finding was published, Plaintiffs amended their October 2000 complaint, alleging that we used the wrong procedures and standards to assess the petition. From approximately January 2002 through April 2004 we received important information relevant to the status of CRCT from the wildlife departments of Colorado, Utah, and Wyoming, and from the National Park Service (NPS), BLM, and USFS. According to CBD's complaint, this information was used inappropriately in our 90-day finding because we only solicited information and opinions from limited outside sources.

On September 7, 2006, the Court ruled in favor of the Plaintiffs and ordered us to produce a status review and 12-month finding for CRCT within 9 months. A notice was published in the **Federal Register** (71 FR 65064) announcing the opening of a comment period from November 7, 2006, to January 8, 2007. A public workshop was held on December 6–7, 2006, to obtain additional information.

**Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Species. In making this finding, we summarize below information regarding the status and threats to this species in relation to the five factors provided in section 4(a)(1) of the Act.

In response to our 2006 **Federal Register** notice, we received comments and information on CRCT from the States of Colorado, Utah, and Wyoming, as well as USFS, BLM, private citizens and organizations, and other entities. Among the materials that we received, the most important was a rangewide status report for CRCT (Hirsh et al. 2006). The Hirsh et al. (2006) status report is a comprehensive document covering the entire range of the CRCT.

The CRCT rangewide status report (Hirsch et al. 2006) and the comprehensive database that is the report's basis, along with other supplemental submissions from the agencies and commenter, provide the best scientific and commercial information available that describes the current rangewide status of CRCT. The rangewide status report summarizes information provided by 48 fisheries professionals from Colorado, Utah, Wyoming, and New Mexico, including State wildlife agencies, USFS, BLM, and the Service (Hirsch et al. 2006, p. 1). Specific protocols were developed and the information was assembled in a Geographic Information System (GIS) database. A peer review was conducted of the report by five recognized experts in the field of fishery biology, conservation biology, and/or genetics. The results of the peer review found that overall the document provides sound scientific data to use as the basis for our 12-month finding.

During the recent public comment period, we received comments from the petitioners (Greenwald 2007, pp. 2–3) recommending that we use the criteria developed to evaluate Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) for evaluating CRCT. The Service finds that the criteria for the Rio Grande cutthroat trout were appropriate for that subspecies at the time of its candidate status review. However, at that time, a rangewide status assessment was not available for that subspecies. The Service finds that the most recent rangewide status report for CRCT (Hirsch et al. 2006) provides the best scientific information on the rangewide status of the subspecies. It provides a broad picture of the status of the subspecies without eliminating populations that may provide important resources for the conservation of the subspecies.

In making this finding, we considered all scientific and commercial information that we received or acquired between the time of the initial petition (December 1999) and the end of the Status Review public comment period (January 8, 2007). We relied primarily on published and peer-reviewed documentation for our conclusions.

*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Most CRCT populations currently occupy lands administered by Federal agencies. Of the total 4,863 km (3,022 mi) of occupied habitat, including sport fish populations (includes all CRCT populations), 3,618 km/2,248 mi (74 percent) are under Federal jurisdiction, with the majority occurring within National Forests (Hirsch et al. 2006, p. 27). National Forest wilderness areas have 750 km (466 mi) of CRCT habitat, and other National Forest lands have 2,494 km (1,550 mi) of habitat. The CRCT occupy 336 km (209 mi) of land administered by the BLM and 37 km (23 mi) managed by the NPS.

Land uses associated with each conservation population were identified in Hirsch et al. (2006, p. 50, Table 33), but the significance of the activities was not determined in relation to individual populations or the conservation of the subspecies. Non-angling recreation (camping, hiking, ATV use, etc.) occurs in 73 percent of the conservation populations, and angling occurs in 71 percent of the conservation populations. Livestock grazing occurs in 68 percent of the conservation populations, roads in 42 percent, timber harvest in 24 percent, and dewatering in 16 percent. A small percentage of populations have mining, nonnative fish stocking, hydroelectric plants or water storage, or other activities. Many populations have more than one land use occurring in the area.

A comprehensive assessment of the effects of land management practices on CRCT does not exist. However, an evaluation of habitat quality was conducted for currently occupied habitat (Hirsch et al. 2006, p. 23). The evaluation considered both natural habitat features and human disturbances, including land use practices. A stream ranked excellent if it had ample pool habitat, low sediment levels, optimal temperatures, and quality riparian habitat. Good habitat quality may have some attributes that are less than ideal, and fair habitat has a greater number of attributes that are less than ideal. Poor habitat quality is found where most habitat attributes reflect inferior conditions. Approximately 618 km/384 mi (13 percent of occupied habitat) (including sport fish populations) received an excellent habitat rating. Good habitat conditions were found in 1,419 km/882 mi of habitat (29 percent of occupied habitat) and fair habitat conditions were found in 2,276 km/1,414 mi of habitat (47 percent of occupied habitat). Poor conditions were found in 275 km/171 mi (5.7 percent of occupied habitat), and habitat conditions in 275 km/171 mi (5.7 percent) were unknown. The majority of occupied habitat (89 percent) is considered in fair, good, or excellent condition, which indicates that current management practices under Federal land management agencies and other jurisdictions in general are maintaining habitat conditions that support CRCT.

Livestock grazing occurs in the vicinity of over half of the CRCT populations. Appropriately managed livestock grazing can occur in the vicinity of CRCT habitat while maintaining habitat conditions that support CRCT. We recognize that overgrazing does cause adverse impacts to some individual populations of CRCT. However, only 5.7 percent of the occupied stream miles were considered to have poor habitat quality, according to the habitat evaluation in the rangewide status report (Hirsch et al. 2006, p. 23). Specific information on grazing impacts to CRCT habitat on a rangewide basis is not available. We did not receive information that led us to believe that overgrazing has caused declines in CRCT to the extent that it affects the rangewide status of the subspecies.

Roads, timber harvest, dewatering, and other activities occur in the area of some CRCT populations. The presence of these activities may directly affect CRCT habitat in certain locations. However, the habitat quality evaluation (Hirsch et al. 2006, p. 23) indicates that most CRCT habitats are currently maintained in excellent, good, or fair condition, providing adequate habitat for the persistence of the subspecies throughout its current range.

Oil and gas development has been accelerating over the last several years in Colorado, Utah, and Wyoming. Oil and gas development could affect CRCT through increased land disturbance from roads and pads that could cause increased sediment loads and water

quality problems associated with discharge of produced water reaching CRCT habitat. The BLM provided maps overlaying CRCT conservation populations in Colorado and Wyoming with the occurrence of existing active and inactive wells and existing oil and gas leases on BLM, USFS, and other lands where BLM has jurisdiction over the subsurface mineral rights. The mapping analysis showed that there is very little overlap between oil and gas development sites and CRCT conservation populations. For the most part, CRCT populations occur at higher elevations where there is minimal oil and gas activity. Specific areas may have high potential for oil and gas development, such as the Roan Plateau in western Colorado (Upper Colorado GMU) and the Wyoming Range in Wyoming (Upper Green GMU). However, it does not appear that oil and gas development would impact a significant number of conservation populations to the extent of influencing the status of the subspecies. Where oil and gas development is proposed, the BLM is implementing measures to protect CRCT habitat. For example, the Roan Plateau Plan proposes special land use designations such as no ground disturbing activities and no surface occupancy for occupied and other high-value CRCT habitat; and Site-specific Relocation/Controlled Surface Use for the entire Parachute Creek Watershed Management Area (BLM 2006, pp. 2–13).

State and Federal agencies are implementing existing programs to restore and enhance CRCT habitat. Most of the 285 conservation populations (72 percent) have one or more restoration, conservation, or management activities either completed or currently being implemented within CRCT habitat (Hirsch et al. 2006, p. 50). One example is the Strategic Habitat Plan adopted by the Wyoming Game and Fish Commission in 2001 (WGFD 2007, p. 16), where habitat biologists work with landowners and land managers to manipulate habitat on a watershed scale, providing benefits to both terrestrial and aquatic wildlife resources. Even though the Strategic Habitat Plan was not officially adopted until 2001, many projects of this nature were already being implemented. An example is the Little Mountain project which has been ongoing for more than 12 years. This effort is an integrated watershed restoration project implemented in a 91,054-hectare (225,000-acre) watershed in the Upper Green River GMU. Habitat managers have used a variety of treatments, including 216 habitat improvement structures, 37 km (23 mi) of fence, 860 trees planted, 12,910 hectares (31,900 acres) treated with prescribed fire, and 16 km (10 mi) of pipeline and 12 stock tanks for livestock water development. As a result, stream mileage inhabited by CRCT in the project area tripled to 61 km (38 mi), while population densities increased by over 1,000 percent (WGFD 2007, pp. 17–18). Livestock grazing allotment buyouts also have been implemented under this program to reduce impacts of overgrazing and improve watershed conditions for CRCT (WGFD 2007, pp. 16–19).

The CBD (Greenwald 2007, p. 7) submitted comments stating that impacts of livestock grazing, logging, water diversion, roads, and oil and gas drilling were extensively documented in their original petition. However, the analysis presented in the petition assumed that if a land management activity occurred in the vicinity of a CRCT population, the activity was adversely affecting the population. In our 90-day finding, the Service recognized that overgrazing and other land management activities can be detrimental to trout habitat, and that overgrazing and other land management activities may occur in some habitats occupied by CRCT. The petition asserted that habitat conditions are degraded in a significant portion of the subspecies' range. According to Greenwald (2007, p. 7), the information presented in the petition clearly indicates that ongoing habitat degradation is threatening remaining CRCT populations. However, the petition used the habitat limitations data field presented in Appendix A of the Conservation Agreement and Strategy (CRCT Task Force 2001 pp. 38–49) to draw this conclusion. This data field is not adequate to determine the habitat condition of individual streams or lakes or to determine the condition of the habitat rangewide. In contrast with the CBD (Greenwald 2007, p. 7), we found that the mere presence of an activity within a stream segment that hosts a conservation population is not sufficient evidence to conclude that the population is threatened. Additional parameters, such as distribution and abundance, and recent trends, must be factored into an overall status determination. Otherwise, logic would dictate that every species that comes into contact with managed landscapes is threatened by those human influences. Such a conclusion is not reasonable.

*Summary of Factor A*

In summary, populations of CRCT that meet the State management agency standards as conservation populations (i.e., CRCT populations we are considering for the purposes of this finding) and are well distributed in the 8 GMUs (major watersheds). The major watersheds contain 42 HUCs (smaller watershed designations within each GMU) throughout CRCT native range. The majority of the conservation populations occur in the Upper Green and Upper Colorado GMUs, with a substantial number of conservation populations occurring in the Yampa, Lower Green, and Gunnison GMUs.

Land use practices, such as livestock grazing, road maintenance, and timber harvest, are occurring in most areas of occupied habitat. However, habitat quality ratings of fair, good or excellent are being maintained in a large majority of CRCT habitat throughout the current range of the subspecies. The majority of the populations occur on Federal lands where land use regulations ensure maintenance of existing habitat (see Factor D), with restoration and enhancement projects occurring in the majority of these populations.

Substantial numbers of CRCT conservation populations with adequate habitat conditions exist in the eight major GMUs of the upper Colorado River basin, collectively forming a solid basis for persistence of conservation populations of CRCT. Based on the present information, we conclude that the best scientific and commercial information available to us indicates that present or threatened destruction, modification, or curtailment of habitat or range has not affected the status of CRCT to the extent that listing under the Act as a threatened or endangered species is warranted at this time.

*Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

No commercial harvest of CRCT currently occurs, so any potential overutilization would come from recreational angling. Data show that angling occurs in 71 percent of CRCT conservation populations (Hirsch et al. 2006, p. 50). Colorado, Utah, and Wyoming all have special regulations that provide protection against over-harvest of CRCT. These special regulations include catch-and-release requirements, very limited harvest, fishing closures, and tackle restrictions. Also, the remote location of many CRCT streams provides protection from heavy fishing pressure (CRCT Coordination Team 2006a, p. 10). Angling for CRCT is considered an incidental activity because most streams are small and difficult to access by vehicle, and adult fish are small due to the short growing

season at high elevations (Fausch et al. 2006, p. 32)

In Colorado, Administrative Directive W–6 classifies CRCT waters as ''Native Fish Species Conservation Management,'' where the primary purpose of management is for native cutthroat recovery and conservation. Primary consideration is to protect the populations from pathogens and overfishing by implementing special regulations, which may include prohibiting angling where determined appropriate (CDOW 2007, pp. 3–4). In Utah, several fishing regulations have been implemented to protect native cutthroat trout from overutilization. For example, Statewide trout bag and possession limits were reduced from eight fish to four, and short-term fishing closures were recently imposed to protect native cutthroat trout (Donaldson 2007, p. 3). Wyoming implements various angling restrictions to protect CRCT populations, such as complete fishing closures, catch and release only, reduced bag limits, seasonal closures, or tackle restrictions (WGFD 2007, p. 23).

Scientific collection of CRCT for scientific or educational purposes is controlled by a strict permitting process that prevents excessive sampling in Colorado, Utah, and Wyoming (CRCT Coordination Team 2006a, p. 10). Collection of fish tissue for genetic sampling is now conducted by non-lethal techniques.

*Summary of Factor B*

In our 90-day finding (69 FR 21151), we concluded that angler harvest did not pose a significant threat to the continued existence of CRCT. We did not receive any new information during the status review to change this conclusion. As a result of this status review, we conclude that the best scientific and commercial information available to us indicates that overutilization for commercial, recreational, scientific, or educational purposes has not affected the status of CRCT to the extent that listing under the Act as a threatened or endangered species is warranted.

*Factor C. Disease or Predation*

Disease

Disease risks are evaluated in the status report (Hirsch et al. 2006, pp. 41–43). Diseases considered in this evaluation included whirling disease, along with several others. Risks are assessed based on proximity of disease-causing pathogens and their accessibility to a population. The majority of the populations (63 percent) are considered to have very limited risk from disease because disease and pathogens are not known to exist in the watershed, or a barrier is in place blocking upstream fish movement. In general, populations that are isolated have less risk of catastrophic diseases (Hirsch et al. 2006, p. 42). Only five populations are known to be currently infected with one of the identified diseases.

In recent years, whirling disease has become of great concern to fishery managers in western States. Whirling disease is caused by the nonnative myxosporean parasite, *Myxobolus cerebralis*. This parasite was introduced to the United States from Europe in the 1950s and requires two separate host organisms to complete its life cycle. Its essential hosts are a salmonid fish and an aquatic worm, *Tubifex tubifex*. Field experiments have shown that CRCT are very susceptible to whirling disease, with an 85 percent mortality rate over a 4-month period when CRCT were exposed to the parasites in the Colorado River (Thompson et al. 1999, pp. 317–325). However, *Tubifex tubifex* is usually most abundant in areas of high sedimentation, warmer water temperatures, and low dissolved oxygen. Most populations of CRCT occur in cold water stream habitats at high elevations, where the aforementioned conditions are unlikely to exist and where *Tubifex tubifex* is unlikely to be abundant. Thompson et al. (1999, pp. 317–325) found infection rates to be low when temperatures are less than 10 °C (50 °F). Out of the several hundred CRCT populations reported by the States, only a few populations of CRCT in Utah and Wyoming have been infected by whirling disease (Hirsch et al. 2006, p. 42).

All three States have developed management activities to protect CRCT populations from whirling disease. In Colorado, policies require that only fish that have tested negative for *Myxobolus cerebralis* within 60 days of stocking are permitted to be released into CRCT waters. Colorado also requires disease-free certification and requires the use of isolation/quarantine units for CRCT stocks (Hebein et al. 2007, pp. 10–12). Utah has some of the most stringent fish disease laws in the United States (Donaldson 2007, p. 4). Utah has a Fish Health Board that oversees the disease testing protocol. Utah does not allow fish that test positive for whirling disease to be stocked anywhere (Donaldson 2007, p. 4). UDWR is studying the effects of whirling disease on the few CRCT waters in Utah that have been infected by whirling disease (Donaldson 2007, p. 4). Wyoming has a policy that any fish testing positive for *Myxobolus cerebralis* will not be stocked (WGFD 2007, pp. 23–24).

Predation

Where they occur in the same habitat, CRCT are often replaced by nonnative trout, primarily brook trout (*Salvelinus fontinalis*), but the degree to which predation is a factor in this replacement has not been well studied (Peterson et al. 2004, p. 755). The CDOW concluded that predation is not a factor for CRCT, because of the lack of large predatory fish, such as brown trout (*Salmo trutta*), lake trout (*Salvelinus namaycush*), or northern pike (*Esox lucius*) in CRCT habitat (Hebein et al. 2007, p. 12). We find that there is insufficient information to conclude that predation by nonnative fishes is a significant threat to CRCT.

*Summary of Factor C*

The recent rangewide status report (Hirsh et al. 2006, p. 41) found only five CRCT populations currently infected with a significant disease, and only four additional populations to be at high risk for infection. As a result of this analysis, we conclude that the best scientific and commercial information available to us indicates that whirling disease or other disease organisms have not affected the status of CRCT to the extent that listing under the Act as a threatened or endangered species is warranted at this time. While nonnative fishes have been identified as a factor in the population dynamics of CRCT, very little specific information is available that describes how predation affects individual populations of CRCT. Fish surveys show that large predatory fish do not occur in CRCT habitat. Therefore, based on the available information, it does not appear that predation affects the status of CRCT to the extent that listing under the Act as threatened or endangered is warranted at this time.

*Factor D. Inadequacy of Existing Regulatory Mechanisms*

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those extant threats that place the species in danger of becoming either threatened or endangered. In the States of Colorado, Utah, and Wyoming, CRCT are considered a game species, and each State has specific regulations regarding catching CRCT by angling. The management authorities that develop and set the angling regulations typically do not own or manage the habitat in the watersheds inhabited by CRCT conservation populations. Most of that

habitat is managed by Federal land management agencies, primarily the USFS and BLM.

Regulatory Mechanisms Involving Land Management

Numerous State and Federal laws and regulations are in existence that help to minimize adverse effects of land management activities on CRCT. Federal laws that protect CRCT and their habitats include the Clean Water Act, Federal Land Policy and Management Act, National Forest Management Act, Wild and Scenic Rivers legislation, Wilderness Act, and the National Environmental Policy Act. Approximately 74 percent of CRCT habitat occurs on lands managed by Federal agencies. The majority of those lands are managed by the USFS. The CRCT occur in a large geographic area within the following National Forests: Arapaho-Roosevelt, Grand Mesa-Uncompahgre-Gunnison, Medicine Bow-Routt, San Juan, White River, Manti-La Sal, Wasatch-Cache, Ashley, Dixie, and Bridger-Teton. Approximately 23 percent of USFS lands that have CRCT habitat are designated wilderness areas. Wilderness Areas and National Parks provide an extra level of protection for CRCT because many land management activities are prohibited in these areas. Regulatory mechanisms that address threats from pathogens and hybridizing nonnative fishes, such as fish stocking regulations, are addressed under Factors C and E.

Other aquatic species listed under the Act do not overlap with the current range of the CRCT. The following four endangered fish species occur in the upper Colorado River basin in Colorado, Utah, Wyoming, and New Mexico: The Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), and bonytail (*Gila elegans*). However, these species occur in the warm water reaches of the upper Colorado River basin and well downstream of any occurrence of CRCT. Water releases from upstream reservoirs as part of the recovery program to benefit the Colorado River endangered fishes would not flow through CRCT habitat. The threatened wetland plant, *Spiranthes diluvialis* (Ute ladies'-tresses orchid) and its potential habitat, occur in wetlands along the mainstem Green River in Colorado and Utah and the Yampa River in Colorado, outside the current range of CRCT.

U.S. Forest Service

The USFS Sensitive Species policy in Forest Manual 2670 outlines procedures to address sensitive species. This policy is applied to projects implemented under the 1982 National Forest Management Act Planning Rule. The CRCT is designated a sensitive species by USFS Regions 2 and 4 where the Forests are operating under the forest plan for the 1982 Rule. However, in 2005, the USFS implemented a new planning rule (70 FR 1023, January 5, 2005), which directs Land Management Plans (LMPs) to be more strategic and less prescriptive. Under the new rule, LMPs identify ecosystem-level desired conditions and provide management objectives and guidelines to move toward the desired conditions (Troyer 2007, pp. 1–2). The LMPs also will provide species-specific direction for special status species when the broader ecosystem-level desired conditions do not provide for their needs.

USFS Region 2 (which includes all Colorado National Forests and the Medicine Bow National Forest in Wyoming) applies practices outlined in their Watershed Conservation Practices Handbook to CRCT habitat (USFS 2006, pp. 1–29). This handbook states that the USFS will apply watershed conservation practices to sustain healthy soil, riparian, and aquatic systems. The handbook provides Management Measures with specific design criteria to implement the management measures. For example, Management Measure No. 3 states: ''In the water influence zone next to perennial and intermittent streams, lakes, and wetlands, allow only those actions that maintain or improve long-term stream health and riparian ecosystem condition.'' In riparian areas and wetlands that are not meeting or likely to attain desired healthy condition, one design criteria to implement the Management Measure is to exclude livestock from areas where monitoring information shows that continued livestock grazing prevents attainment of those objectives. Implementation of such measures should maintain or enhance CRCT habitat.

Greenwald (2007, p. 19) and Mueller (2007, pp. 1–2) submitted comments for this status review that assert that the National Forest Management Act and other laws are inadequate and their implementation is insufficient to provide necessary protections to CRCT on USFS lands. They express concern regarding the changes in Forest planning procedures between the 1982 National Forest Management Act Planning Rule and the 2005 Planning Rule and its ability to protect CRCT on USFS lands. We considered the changes in the planning process and found that, under the revised Forest Planning Regulations (70 FR 1023, January 5, 2005), CRCT are classified as a ''species of concern.'' This designation provides protections similar to those received for sensitive species and requires that LMPs include additional provisions to accommodate these species and provide adequate ecological conditions to continue to provide for the needs of CRCT. The USFS is required to develop a specific plan for CRCT for each LMP where the species occurs and project level analysis is required when a project is proposed in CRCT habitat. One component of the new planning process is the requirement for a monitoring plan. The purpose of the monitoring plan is to collect data at set intervals so that the USFS can evaluate progress toward achieving desired conditions, including conditions for species of concern, described in the LMP. A Comprehensive Evaluation Report is produced every five years that summarizes these data, identifies conditions and trends, and identifies the need for change.

Bureau of Land Management

The CRCT is a designated sensitive species by the BLM in Colorado, Wyoming, and Utah. The BLM's policy for sensitive species offers the same level of protection as BLM's policy for candidate species. The policy reads as follows:

> For candidate/sensitive species where lands administered by the BLM or BLM authorized actions have a significant effect on their status, manage the habitat to conserve the species by:
>
> a. Ensuring candidate/sensitive species are appropriately considered in land use plans.
>
> b. Developing, cooperating with, and implementing range-wide or site-specific management plans, conservation strategies, and assessments for candidate/sensitive species that include specific habitat and population management objectives designed for conservation, as well as management strategies necessary to meet those objectives.
>
> c. Ensuring that BLM activities affecting the habitat of candidate/sensitive species are carried out in a manner that is consistent with objectives for managing those species.
>
> d. Monitoring populations and habitats of candidate/sensitive species to determine whether management objectives are being met.

National Park Service

As stated in our 90-day finding, the current fisheries management objectives in Rocky Mountain National Park were established in 1969, when the stocking of nonnative and hybrid fishes was no longer permitted. Lakes that did not maintain reproducing populations of fish became fishless (Rosenlund et al. 2001, p. 2). Five sites that contain core

conservation populations within Rocky Mountain National Park are open to catch-and-release fishing, and four other sites have a two-fish limit. Most CRCT waters within the Park are in high-elevation remote locations, where angling pressure is very light. Livestock grazing, timber harvest, mining, or other development do not occur in Rocky Mountain National Park.

Regulatory Mechanisms Involving Water Quantity

An important regulatory mechanism controlled by the States is the implementation of instream flow regulations in CRCT habitat. In Colorado, the Colorado Water Conservation Board holds instream flow water rights for 8,539 stream kilometers (5,306 stream miles) in 915 stream segments in the upper Colorado River basin in western Colorado. Approximately 55 percent of the conservation populations in Colorado are protected by instream flow rights and/or wilderness or national park designation, and an additional 38 percent are on an appropriation list for future protection through filing of instream flow water rights (Hebein et al. 2007, p. 15). The State of Wyoming has approved instream flow rights on 28 stream segments encompassing 187 km (116 mi) of CRCT habitat (WGFD 2007, p. 17).

Greenwald (2007, p. 13) submitted comments for this status review, indicating that the Conservation Agreement and Conservation Strategy (CRCT Coordination Team 2006a, 2006b) are voluntary agreements that do not qualify as regulatory mechanisms. The Service agrees with that assessment and based its finding of the listing status of CRCT on the best available scientific and commercial information regarding the status and threats to CRCT, not on the promised or anticipated results of conservation actions.

*Summary of Factor D*

Our status review has revealed information to indicate that regulatory mechanisms related to land management or fisheries management are effective, and will continue to be effective in protecting CRCT in the future. The USFS, BLM, NPS, Colorado, Utah, and Wyoming all have regulatory mechanisms in place that specifically protect CRCT. As a result of this status review, we conclude that the best scientific and commercial information available to us indicates that any identified inadequacies of existing regulatory mechanisms have not affected the status of CRCT to the extent that listing under the Act as a threatened or endangered species is warranted.

*Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

Fragmentation and Isolation of Small CRCT Populations in Headwater Areas

The majority of CRCT conservation populations (66 percent) occur as isolated, non-networked populations (Hirsch et al. 2006, p. 44). Another 72 populations (25 percent) are considered weakly connected, and 17 populations (6 percent) are considered moderately connected. Only eight populations have migratory forms present and open migration corridors so that they are considered strongly connected. The strongly connected populations occur in Utah and Wyoming in the Upper Green, Lower Green, and Yampa GMUs (Hirsch et al. 2006, p. 32). The CRCT Coordination Team (2006b, p. 8) defines metapopulations as a collection of localized populations that are geographically distinct but genetically interconnected through natural movement of individual fish between populations. Metapopulations are important because they maintain genetic exchange and increase genetic diversity. They also provide individuals to repopulate stream segments where populations are lost due to stochastic environmental events. While metapopulations are important in the overall status of the subspecies, they are at a higher risk for disease and invasion of nonnative fish.

Some problems associated with small isolated populations are the increased risk of extirpation by catastrophic events and the loss of genetic exchange (CRCT Coordination Team 2006a, p. 9). Many populations occur in headwater streams where cold water temperatures and small stream size make habitat conditions less than optimal. In high elevation streams, cold summer water temperatures tend to delay spawning and these small stream often lack the deep water pools that are important to overwinter survival (Harig and Fausch 2002, pp. 545–547).

The small size of some CRCT populations is directly related to short stream segments where they occur. Through modeling, Hilderbrand and Kershner (2000, pp. 215–218) estimated minimum stream length for several subspecies of cutthroat trout in relation to population size. They estimated that a stream length of 3 km (2 mi) was required to support a population of 1,000 fish; 8 km (5 mi) to support 2,500 fish; and 17 km (10 mi) to support 5,000 fish. Recent modeling found that streams thought to be below the population thresholds for long-term persistence based on minimum stream length have higher numbers of CRCT than originally predicted and that small increases in habitat length can produce a disproportionately greater increase in fish abundance (Young et al. 2005, p. 2406). Small, isolated populations have persisted for many years, such as above waterfalls and or in desert basins (Hilderbrand and Kershner 2000, p. 517). Specific criteria for population size to maintain viability has not been developed for CRCT (CRCT Coordination Team 2006a, p. 8).

Small, isolated populations are at greater risk from stochastic events such as fire, floods, and drought that may threaten individual populations. However, widespread geographic distribution of CRCT in numerous individual populations mitigates the potential of future catastrophic natural events from affecting a large proportion of the populations. It is unlikely that a significant number of populations would be lost to the extent of affecting the overall status of the subspecies. Also, the fishery management agencies have the ability and management direction to reestablish CRCT populations in areas where they may be lost to natural catastrophic events. Wildfire is typically thought of as negatively affecting CRCT. However, where nonnative fishes occur in CRCT habitat, fire can present an opportunity to eliminate the nonnative fishes and provide an appropriate situation for reestablishment of CRCT (Hebein et al. 2007, pp. 16–17). New populations have been established in areas that were previously vacant such as above waterfalls and artificial barriers.

Active programs are in place to restore metapopulations within the historic range of CRCT. For example the WGFD, UDWR, and USFS worked together to eliminate nonnative trout and restore CRCT in portions of the Gilbert Creek drainage in the Upper Green GMU. The project, completed in 2003, connected three populations and restored over 10 km (6.5 mi) of stream in Wyoming and several more in Utah (WGFD 2007, p. 15).

A general population health evaluation was conducted for all CRCT conservation populations (Hirsch et al. 2006, pp. 44–49). The evaluation was based on the following four health indicators: Temporal variability, population size, production potential, and population connectivity. Temporal variability looked at stream length to indicate patch size and resiliency. Population size of adults was used to estimate effective population size.

Production potential used growth and survival to estimate habitat quality, presence of nonnative fishes, disease, and land use impacts. Population connectivity identified the degree to which populations were networked or connected.

The general health evaluation found that most of the conservation populations (69 percent) occur in stream reaches of less than 10 km (6 mi) (Hirsch et al. 2006, pp. 44–49). About 25 percent of the conservation populations occupy stream reaches between 10 km (6 mi) and 31 km (19 mi) in length, and 15 populations (5 percent) occupy stream reaches between 32 km (20 mi) and 64 km (40 mi). Two conservation populations (less than 1 percent) occupy stream reaches at least 80 km (50 mi) long. Evaluation of adult population estimates found that 12 percent of the conservation populations have at least 2,000 adult CRCT. About one-third of the conservation populations had between 500 and 2,000 fish, and another third had between 50 and 500 adult fish. The remainder of the populations had fewer than 50 adult fish. Most of the conservation populations (89 percent) were considered to be moderately healthy in terms of growth and survival, based on habitat quality, presence of nonnative trout, disease risk, land uses, and recovery actions. Composite scores of general health ranked the majority of populations with a moderately low level of general health primarily due to the number of small, isolated populations.

The CRCT Conservation Team determined that it is important to incorporate two different conservation strategies (Hirsch et al. 2006, p. iv). One strategy emphasizes isolated populations because they are less susceptible to introgression, disease, and competition from nonnative fish. Multiple populations distributed throughout a watershed provide a mechanism for spreading risk because the simultaneous loss of all populations within the watershed is unlikely. A second strategy is to preserve and restore metapopulations to provide genetic exchange and allow for larger populations. Within the current range of CRCT both isolated populations and metapopulations are present, providing features for both conservation strategies.

Fisheries Management

Since the late 1800s, fishery managers have implemented fish stocking programs that introduced nonnative salmonids into lake and stream habitats of CRCT. Nonnative rainbow trout have been introduced extensively throughout the range of CRCT, and they now compete and hybridize with CRCT. Stocking records from as early as 1885 from CDOW and the Service (formerly the U.S. Fish Commission) indicate that greenback cutthroat trout (*Oncorhynchus clarki stomias*), a subspecies known to occur in Colorado east of the continental divide in the South Platte and Arkansas River drainages, were raised in hatcheries and stocked in CRCT waters (Wiltzius 2007, pp. 1–22). These stocking records also indicate nonnative Yellowstone cutthroat trout (*Oncorhynchus clarkii bouvieri*) were stocked in CRCT waters. These subspecies of cutthroat trout are known to interbreed with CRCT. Nonnative brook trout also were stocked in the past for sport fishing purposes and are known to compete with CRCT. The numbers of kilometers where nonnative trout are present exceed the numbers of kilometers where records indicate nonnative trout stocking occurred in most areas, indicating that fish disperse to larger areas after stocking (Hirsch et al. 2006, pp. 25–26).

Trappers Lake near the headwaters of the White River in Colorado had an endemic population of CRCT and was used to harvest eggs for routine stocking throughout Colorado by the CDOW (Martinez 1988, p. 86). A hatchery was constructed on Cabin Creek, a tributary to Trappers Lake, and by the 1920s, 2 million eggs a year were taken and used for stocking programs in Colorado (Rogers and Wangnild 2005, pp. 1–2). In the 1930s, CRCT from Trappers Lake were planted in Lake Nanita in Rocky Mountain National Park and Williamson Lake in California, which remain today as sources of original Trappers Lake CRCT (Rogers and Wangnild 2005, pp. 1–2). Trappers Lake was stocked with Yellowstone cutthroat trout between 1943 and 1950, and ''black-spotted trout'' (any combination of cutthroat trout, including hybrids) in 1952 and 1965 (Martinez 1988, p. 86). Later, both rainbow trout and brook trout were introduced into Trappers Lake. Trappers Lake is no longer considered a pure population appropriate for providing a source of eggs for restoration, and spawning operations were suspended in 2000 (Rogers and Wangnild 2005, p. 2).

Fish and wildlife agencies no longer stock nonnative trout in CRCT habitat (CRCT Coordination Team 2006a, p. 9). In some instances private parties may be illegally stocking waters with nonnative trout that compete with and/or hybridize with CRCT.

Competition From Introduced Brook Trout

Competition from nonnative trout, especially brook trout, is recognized as a threat to CRCT (Behnke 1992, p. 54). Brook trout are the most common nonnative trout sympatric with CRCT populations (Hirsch et al. 2006, pp. 96–200). Studies have shown CRCT are displaced when brook trout occur in the same habitat (Peterson et al. 2004, p. 769). Recent studies have found that brook trout reduce recruitment of CRCT and reduce inter-annual survival of juvenile CRCT, which leads to reduction in population size of CRCT (Peterson et al. 2004, p. 769). Experiments where brook trout were removed from CRCT populations showed an increase in the survival of juvenile CRCT (Peterson et al. 2004, p. 767).

Brook trout are no longer stocked in CRCT waters in Colorado, Utah, or Wyoming. Ongoing programs are being implemented to remove brook trout by mechanical or chemical means from CRCT waters in all three States (Hebein et al. 2007, pp. 19–32; Donaldson 2007, p. 2; WGFD 2007, p. 9). In Utah, between 1992 and 2006, nonnative fish removal was conducted on almost 161 km (100 mi) of CRCT streams (Donaldson 2007, p. 9). Approximately 30 percent (898 km [558 miles]) of stream kilometers that support CRCT conservation populations are sympatric with brook trout (Brauch 2007).

Barriers have been constructed, or natural barriers exist, that protect CRCT populations from both brook trout invasion and hybridization threats from nonnative fishes. Complete barriers assist in protecting 139 conservation populations (49 percent) occupying 982 km (610 mi) of stream, and partial barriers help protect 27 populations occupying 322 km (200 mi) of stream (Hirsch et al. 2006, p. 36). While barriers help protect populations from nonnative fish invasion, there are negative effects of installing barriers that must be considered, such as blocking fish movement and fragmenting habitat. Barrier placement may not be appropriate for all native cutthroat populations (Fausch et al. 2006, pp. 2–4).

Hybridization With Nonnative Fishes

The scientific criteria for describing and formally recognizing taxonomic species of fish are based almost entirely on morphological characters (Behnke 1992, pp. 7–11). The advent of molecular genetic techniques in the mid-1960s added an additional set of biological markers that are used to distinguish species and subspecies of native trout in the western United States. In most native cutthroat trout genetic analyses to date, the molecular genetic data have confirmed the evolutionary distinctness among species and subspecies that had been described

taxonomically on the basis of morphology (Behnke 1992, pp. 7–11).

Fish managers have commonly found that cutthroat trout populations that have introgressed at low levels, less than 10 percent introgression (UDWR 2000, pp. 1–9), with nonnative species or subspecies appear to retain morphological, behavioral, and ecological characteristics of their nonintrogressed ancestors. In addition, some published, peer reviewed studies have shown that individuals of a particular cutthroat trout subspecies may possess nuclear genes from another taxon detectable only by molecular genetic techniques, while still conforming morphologically, behaviorally, and ecologically to the scientific taxonomic description of the parental native species (e.g., Busack and Gall 1981, pp. 948–950; Weigel et al. 2002, pp. 397–401).

We do not consider populations or individual fish conforming morphologically to the scientific taxonomic description of CRCT to be a hybridization threat to CRCT. Although such individuals may have genes from another taxon at low frequency (less than 10 percent), we are not aware of any information to suggest that such individuals express behavioral, ecological, or life-history characteristics differently than CRCT native to the particular geographic area. We expect the frequency of genes from the other taxon to remain low in the CRCT population for three reasons: (1) 89 percent of occupied habitat is in fair to excellent condition, which may provide an advantage for native CRCT survival (Busack and Gall 1981, pp. 948–950; Campton and Kaeding 2005, pp. 1323–1324); (2) stocking of nonnative trout in CRCT habitat is no longer practiced by fish and wildlife agencies; and (3) 66 percent of CRCT populations are isolated by human-caused or natural barriers, protecting them from increasing numbers of nonnative trout. If the populations or individual fish in question carry a low level of nonnative genetic material, they would be morphologically indistinguishable from CRCT, and therefore, any behavioral or life history attributes that might be inconsistent with what is normal for CRCT would be virtually impossible to detect. Furthermore, we have maintained that some introgressed populations may be valuable to the overall conservation and survival of a species or subspecies (Campton and Kaeding 2005, pp. 1323–1324; USFWS 2003, pp. 46992–46993).

Our criteria for considering potentially introgressed populations of CRCT are consistent with a Position Paper titled ''Genetic Considerations Associated with Cutthroat Trout Management,'' developed by the fish and wildlife agencies of the intermountain western States (UDWR 2000, pp. 1–9). That document identifies, for all subspecies of inland cutthroat trout, three tiers of natural populations for prioritizing conservation and management options under the State fish and wildlife management authorities: (1) Core conservation populations composed of greater than 99 percent cutthroat trout genes; (2) conservation populations that generally ''have less than 10 percent introgression, but in which introgression may extend to a greater amount depending upon circumstances and the values and attributes to be preserved''; and (3) cutthroat trout sport fish populations that, ''at a minimum, meet the species'' (e.g., CRCT) phenotypic expression defined by morphological and meristic characters (counts of body parts) of cutthroat trout.'' Conservation populations of cutthroat trout also may include those believed to have uncommon, or important, genetic, behavioral, or ecological characteristics relative to other populations of the subspecies under consideration. Sport fish populations are those that conform morphologically (and meristically) to the scientific taxonomic description of the subspecies under consideration, but do not meet the additional criteria of ''conservation'' or ''core'' populations and hence are managed for their value as a sport fish population rather than their value to the conservation of the subspecies. The implicit premise of the Position Paper is that populations must conform, at a minimum, to the morphological and meristic characters of a particular cutthroat trout subspecies in order for those populations to be included in a State's conservation and management plan for that subspecies. To qualify as core or conservation populations, the standards are somewhat higher. Signatories to the Position Paper are the CDOW; Idaho Department of Fish and Game; Montana Fish, Wildlife and Parks; Nevada Division of Wildlife; New Mexico Game and Fish Department; UDWR; and WGFD.

The species criteria described above are consistent with the best scientific and commercial data available because they are based on: (a) The criteria by which taxonomic species of fish are recognized scientifically, and (b) the biological relationship between those taxonomic criteria and levels of genetic introgression detected by molecular genetic methods in natural populations of CRCT. These criteria exclude from CRCT considered for listing all genetically introgressed populations and individual fish that do not conform morphologically to the scientific taxonomic description of the subspecies. These criteria are further justified for this subspecies because—(a) there are no generally applicable standards for the extent of hybridization considered acceptable under the Act; and (b) decisions regarding status of CRCT under the Act must be made for the entire subspecies.

Consequently, any natural population conforming to the scientific taxonomic description of CRCT and meeting the more conservative State position paper standards as a core or conservation population (UDWR 2000) will be considered CRCT under the Act. Populations failing to meet that standard (e.g., cutthroat trout sport fish populations) will not be considered CRCT under the Act.

When CRCT are sympatric with rainbow trout and nonnative subspecies of cutthroat trout, they are known to produce introgressed populations. Genetic status of CRCT was summarized in the rangewide status report (Hirsch et al. 2006, pp. 18–19). Genetic testing has been conducted in more than 1,851 km (1,150 mi) of occupied habitats (38 percent of occupied habitat). It is important to recognize that the testing was not conducted in a random fashion, but testing in general occurred in more accessible populations and in newly discovered populations. Test results showed no evidence of introgression in samples from 1,258 km (782 mi) of occupied habitat (68 percent of the tested area and 26 percent of occupied habitat). An additional 756 km (470 mi) of occupied habitat (16 percent of occupied habitat) was identified as having populations that are suspected to be genetically unaltered. This determination is based on the absence of introduced hybridizing species and no records of stocking hybridizing species, good meristic characteristics, or a population adjacent to a pure population. These populations are considered core conservation populations by the CRCT Coordination Team. There are 153 core conservation populations extant in all 8 GMUs (Hirsch et al. 2006, p. 33).

Testing found hybridized fish present in approximately 591 km (367 mi) of stream (12 percent of occupied habitat). An additional 2,167 km (1,334 mi) of habitat (44 percent of occupied habitat) was identified as containing fish that are potentially hybridized, based on the presence of nonnative hybridizing

species or stocking records that indicate past stocking of nonnative hybridizing species.

An assessment of genetic contamination risk was conducted for all CRCT conservation populations, based on proximity and accessibility of rainbow trout and nonnative cutthroat trout to the conservation population (Hirsch et al. 2006, p. 38). A low genetic risk rating was given to populations where hybridizing species or subspecies were greater than 10 km (6 mi) from the CRCT population. A moderate risk rating was given when hybridizing species or subspecies were within 10 km (6 mi) of the CRCT population. Of the 285 conservation populations, 150 (53 percent) were ranked as having no risk of genetic contamination, due to the presence of a secure barrier that prevents invasion of nonnative species. An additional 10 percent of the populations were rated as having low risk of genetic contamination and 29 percent were rated as moderate risk. Only 8 percent of the populations were considered at high risk for genetic contamination (Hirsch et al. 2006, p. 38). Most populations that were rated with no or low risk of genetic contamination are isolated populations.

Recent unpublished genetic studies have examined the genetic material from selected populations of CRCT and greenback cutthroat trout in Colorado. These studies used three different mitochondrial DNA (deoxyribonucleic acid) analytical techniques to examine the genetic makeup of the sampled populations to assist in determining subspecies association. The studies included several hundred individual fish from more than a dozen populations from the Colorado, Arkansas, and South Platte River drainages. All three techniques were used on each individual fish, and the results appear consistent for all three methods. The unpublished study indicates that the subspecies status of three conservation populations that were identified as CRCT (Hirsch et al. 2006, pp. 29–30) in the Colorado River basin may be in question. We consider these unpublished studies preliminary and not an appropriate basis for removal of these populations from the CRCT conservation population database. However, if 3 populations were determined not to be conservation populations of CRCT, the overall status of the subspecies would not change because more than 280 conservation populations would remain in Colorado, Utah, and Wyoming. We will continue to monitor the genetic status of the conservation populations as ongoing and new studies provide new information.

The State of Utah discontinued stocking of nonnative cutthroat trout by 2000, and in 2002 discontinued stocking rainbow trout in most streams; it now only stocks sterile rainbow trout in areas that have no connection to CRCT habitat. Stocking of nonnative fishes no longer occurs near conservation populations. The CDOW and WGFD also prohibit stocking of nonnative fishes into conservation populations. These management practices should minimize the likelihood of further hybridization with nonnative cutthroat trout.

*Summary of Factor E*

We conclude that the best scientific and commercial information available indicates that risk associated with fragmentation and isolation of small CRCT conservation populations, including stochastic risk from catastrophic natural events, has not affected the status of CRCT to the extent that listing under the Act as a threatened or endangered species is warranted.

We also conclude that the best scientific and commercial information available to us indicates that introgressive hybridization with rainbow trout or other cutthroat subspecies has not affected the status of CRCT to the extent that listing under the Act as a threatened or endangered species is warranted. However, we will continue to evaluate new information that may be available regarding these and other threats, and we urge the public to submit to us any new information that becomes available concerning the status of or threats to CRCT.

**Conclusion**

In the context of the Act, the term ''threatened species'' means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term ''endangered species'' means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which, as the population of a species declines, listing as either ''threatened'' or ''endangered'' becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or an endangered species under the Act are the threats that now confront the species and the probability that the species will persist in ''the foreseeable future.'' The Act does not define the term ''foreseeable future.'' However, we consider the ''foreseeable future'' to be 20 to 30 years, which equates to approximately 4 to 10 CRCT generations, depending on the productivity of the environment. We find that this is both reasonable and appropriate for the present status review because it is long enough to take into account multi-generational dynamics of life-history and ecological adaptation, yet short enough to incorporate social and political change that affects species management.

Evidence exists that populations of CRCT have been greatly reduced over the last 200 years, with much loss occurring in the late 19th and early 20th century (Behnke 1992, pp. 139–145). Recent surveys have found that the number of populations of CRCT have increased in the last 3 decades and the subspecies remains widely distributed throughout a large geographic area. We attribute the decline in the distribution of CRCT to the introduction of nonnative sport fish into CRCT habitat that began in the late 1800s. The wide distribution of rainbow trout and nonnative cutthroat trout caused problems through competition, hybridization, and predation. The introduction of brook trout in CRCT habitat displaced CRCT by competition. These introduced fish have expanded and colonized new habitat and formed naturally reproducing populations that occupy the former, and in some cases current, range of CRCT.

We find there is no evidence of major declines in the overall distribution or abundance of CRCT over the last several decades. Conversely, there is evidence of a substantial increase in the number of known populations (Hirsch et al. 2006, p. 62). Management agencies have increased their focus on the protection and restoration of conservation populations of CRCT in all watersheds currently occupied. Corresponding emphasis is occurring on habitat restoration activities and fisheries management actions, such as restrictive angling regulation changes, designed to benefit CRCT. For many of these actions, it is too early to judge their success. Some of these actions appear to have resulted in improved population levels in some areas.

It is important that the status and distribution of CRCT continue to be monitored. We find that the management agencies are contributing substantial resources in that regard, and we believe the planned annual update of the CRCT database by the CRCT

Conservation Team will become an important document to evaluate future population status changes.

**Significant Portion of the Range**

Pursuant to the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. We evaluated the CRCT throughout its current range to determine if any portion is likely to become threatened or endangered within the foreseeable future, and if so, whether that portion is significant relative to the remainder of the species' range. Based on the available information regarding the abundance of CRCT throughout its current range, and our assessment of threats to the species throughout its current range, we find that no GMU is likely to become threatened or endangered in the foreseeable future. We assessed threats at the watershed-based GMU level, because standardized fish monitoring methods are watershed based. We do not believe that a more subdivided segment of habitat would be significant. For an area to be significant, it must meaningfully contribute to the resilience, redundancy, or representation of a species. We do not believe that areas smaller than the GMU would meaningfully contribute to those qualities in this species. Losses of habitat or species from areas smaller than the GMU level would not threaten the entire GMU, and a sufficient number of GMUs exist to ensure species redundancy and resiliency. No significant ecological differences exist at levels smaller than the GMUs to affect representation of the subspecies. Threats are similar in all eight GMUs, and no individual GMU has threats such that the subspecies is threatened or endangered within it. Therefore, we have determined that no significant portion of the CRCT range is threatened or endangered.

**Finding**

On September 7, 2006, the Court ordered the Service to produce a status review and 12-month finding for CRCT by June 7, 2007. The information summarized in this status review includes substantial information that was not available at the time of the 90-day finding (69 FR 21151), in particular, the information obtained from Hirsch et al. (2006) and other information we received during the public comment period. Because we relied heavily upon Hirsch et al. (2006), we conducted a peer review of the document. Peer reviews were conducted by five recognized cutthroat trout experts who found that the Hirsch et al. document provided sound scientific data on the rangewide status of CRCT.

We found that at least 285 CRCT populations collectively occupy about 2,892 km (1,796 mi) of stream habitat in 42 watersheds in Colorado, Utah, and Wyoming. These populations qualify as ''conservation'' populations of CRCT under standards the States proposed and that are consistent with our assessment of best available science. The populations are distributed throughout the eight GMUs in the historic range of the CRCT. Of the 285 conservation populations identified by Hirsch et al. (2006), about 153 (55 percent) are considered ''core conservation populations'' comprised of nonintrogressed CRCT (greater than 99 percent genetic purity).

Although we determined that distribution of CRCT has been reduced from historic levels (the subspecies now occupies about 13 percent of historic habitat), and existing populations continue to face adverse impacts in most of the historic range, we find that the magnitude and imminence of those impacts do not indicate that the subspecies is likely to become an endangered species within the foreseeable future, which we define as 20 to 30 years, approximately 4 to 10 CRCT generations. This timeframe is long enough to take into account multi-generational dynamics of life history and ecological adaptation, yet short enough to incorporate social and political change that affects species management.

Many former threats to CRCT, such as those posed by excessive harvest by anglers or the ongoing stocking of nonnative fishes, are no longer factors that threaten the continued existence of CRCT.

Hybridization, mostly with nonnative rainbow trout and nonnative subspecies of cutthroat trout, which have established self-sustaining populations in many areas in the range of CRCT, remains an issue of management concern in the form of introgression to CRCT conservation populations. Our finding allows for the limited presence of genetic material from other fish species or subspecies (typically less than 10 percent) in CRCT conservation populations. We do so because individuals or populations with a low level of introgression are morphologically, ecologically, and behaviorally indistinguishable from nonintrogressed (i.e., pure) CRCT. We consider slightly introgressed CRCT populations, with low amounts of genetic introgression detectable only by molecular genetic methods (i.e., ''conservation populations''), to be a potentially important and a valued component overall for CRCT conservation. Many genetically pure populations (153 core conservation populations) remain throughout the current range of CRCT. State and Federal agencies are implementing measures to protect these populations from invasion of nonnative species or subspecies that may interbreed with CRCT.

Competition from nonnative trout, especially brook trout, is recognized as an ongoing issue of management concern with CRCT. Brook trout are the most common nonnative trout sympatric with CRCT populations; however, many populations do not have brook trout present. Brook trout are no longer stocked in CRCT waters and measures to minimize impacts of brook trout, such as placement of barriers and brook trout removal have been implemented for many populations.

The CRCT remains a widely distributed subspecies and there are numerous CRCT populations and some metapopulations throughout the historic range. Moreover, numerous nonintrogressed CRCT populations are distributed in secure habitats throughout the subspecies' historic range. Ongoing conservation efforts, while important, were not pivotal to our decision to find this action not warranted. That decision was based mainly on the present-day status of CRCT, the mitigation of existing threats, and the existence of laws and regulations that work to minimize adverse effects of land management and other activities on CRCT.

On the basis of the best available scientific and commercial information, which has been broadly discussed in this notice and detailed in the documents contained in the Administrative Record for this decision, we find that the CRCT is not now in danger of extinction (endangered), nor is it likely to become endangered within the foreseeable future (threatened). Therefore, listing of the CRCT as a threatened or an endangered species under the Act is not warranted at this time.

**References Cited**

A complete list of all references cited herein is available upon request from the Supervisor at the Western Colorado Ecological Services Office (see **ADDRESSES**).

**Author**

The primary author of this document is Patty Schrader Gelatt (see **ADDRESSES**).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 5, 2007.

**Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

BILLING CODE 4310–55–P

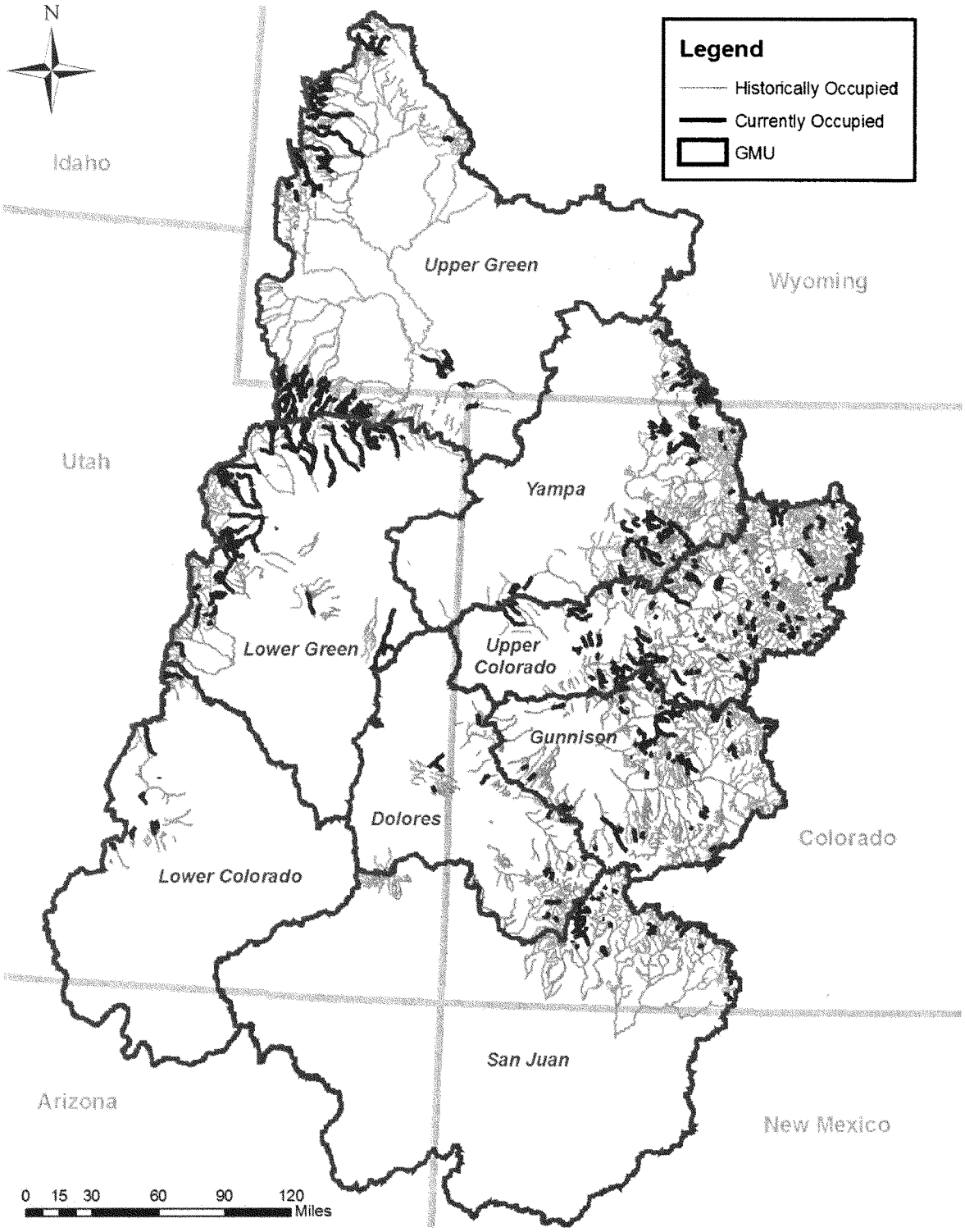


**Figure 1. All CRCT Populations**

TABLE 1.—FROM HIRSCH ET AL. 2006, TABLE 2 (PP. 14–15), TABLE 19 (P. 32)

| GMU name | Currently occupied (km/mi) | Total currently occupied (%) | Number of conservation populations | Occupied by conservation populations (km/mi) |
|---|---|---|---|---|
| Upper Colorado River | 966/600 | 19.9 | 75 | 486/302 |
| Gunnison River | 470/292 | 9.7 | 25 | 148/92 |
| Dolores River | 95/59 | 2.0 | 4 | 22/14 |
| Upper Green River | 1,112/691 | 22.9 | 76 | 1,046/650 |
| Yampa River | 650/404 | 13.4 | 53 | 546/339 |
| Lower Green River | 1,273/791 | 26.2 | 26 | 494/307 |
| Lower Colorado River | 103/64 | 2.1 | 14 | 80/50 |
| San Juan River | 191/119 | 3.9 | 12 | 68/42 |

**Figure 2. CRCT Conservation Populations**

[FR Doc. 07–2915 Filed 6–12–07; 8:45 am]
BILLING CODE 4310–55–C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 224

**[I.D. 021607C]**

### Endangered and Threatened Species. Proposed Endangered Status for the Cook Inlet Beluga Whale; Public Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings.

**SUMMARY:** On April 20, 2007, NMFS proposed the listing of the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA). As part of that proposal, NMFS announced a public comment period to end on June 19, 2007, and then extended the comment period to August 3, 2007. NMFS has received requests for public hearings on this issue. In response, NMFS is announcing that public hearings will be held at two locations in Alaska to provide additional opportunities and formats to receive public input.

**DATES:** The hearings will be held on July 19, 2007, from 6 to 9 p.m. in Homer and on July 20, 2007, from 3:30 to 6:30 p.m. in Anchorage, AK. Written comments must be received by August 3, 2007.

**ADDRESSES:** The July 19, 2007, hearing will be held at the Maritime Refuge, Island and Oceans, 95 Sterling Highway #1, Homer, AK. The July 20, 2007, hearing will be held in hte Loussac Public Library, Wilda Marston Room, 3600 Denali Street, Anchorage, AK.

Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- E-mail: *CIB-ESA-Endangered@noaa.gov*. Include in the subject line the following document identifier: Cook Inlet Beluga Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Mail: P. O Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, AK.
- Fax: (907) 586–7557.

**FOR FURTHER INFORMATION CONTACT:** Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 20, 2007, NMFS published a proposed rule (72 FR 19854) to list the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA), as amended. This action followed completion of the Cook Inlet beluga whale status review, which found this population to be at risk of extinction within the next 100 years and described NMFS' determination that this population constitutes a ''species'', or distinct population segment under the ESA.

### Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In past ESA rule-making NMFS has conducted traditional public hearings, consisting of recorded oral testimony from interested individuals. This format, although providing a means for public input, does not provide opportunities for dialogue and information exchange. NMFS believes that the traditional public hearing format can be improved upon by also including a brief presentation on the results of the Cook Inlet beluga Status Review and other topics of interest.

The preferred means for providing public comment to the official record is via written testimony prepared in advance of the meeting which may also be presented orally. Blank ''comment sheets'' will be provided at the meetings for those without prepared written comments, and opportunity will also be provided for additional oral testimony. There is no need to register for these hearings.

In scheduling these public hearings, NMFS has anticipated that many affected stakeholders and members of the public may prefer to discuss the proposed listing directly with staff during the public comment period. These public meetings are not the only opportunity for the public to provide input on this proposal. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposal (via correspondence, e-mail, and the Internet; see **ADDRESSES**) up until the scheduled close of the comment period on August 3, 2007.

### References

The proposed rule, status review, maps, a list of the references cited in this document, and other materials relating to the proposed listing can be found on the NMFS Alaska Region Web site *http://www.fakr.noaa.gov/*.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 8, 2007.

**Wanda L. Cain,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–11420 Filed 6–12–07; 8:45 am]
BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 72, No. 113

Wednesday, June 13, 2007

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

June 7, 2007.

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) 720–8681.

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:* Agricultural Prices.

*OMB Control Number:* 0535–0003.

*Summary of Collection:* Estimates of prices received by farmers and prices paid for production goods and services are needed by the U.S. Department of Agriculture, National Agriculture Statistics Service (NASS) for the following purposes: (a) To compute Parity Prices in accordance with requirements of the Agricultural Adjustment Act of 1938 as amended (Title III, Subtitle A, Section 301a, (b) to estimate value of production, inventory values, and cash receipts from farming, (c) to determine the level for farmer owned reserves, (d) to provide guidelines for Risk Management Agency price selection options, (e) to determine Federal disaster prices to be paid, and (f) to determine the grazing fee on Federal lands. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

*Need and Use of the Information:* The NASS price program computes annual U.S. weighted average prices received by farmers for wheat, barley, corn, oats, grain sorghum, rice, and cotton based on monthly marketing. Prices estimates are used by many Government agencies as a general measure of commodity price changes and for disaster and insurance payments.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 39,592.

*Frequency of Responses:* Reporting: On occasion; Monthly; Annually; Biennially.

*Total Burden Hours:* 12,016.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–11327 Filed 6–12–07; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 7, 2007.

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.

**Animal and Plant Health Inspection Service**

*Title:* Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity.

*OMB Control Number:* 0579–0305.

*Summary of Collection:* The Animal and Plant Health Inspection Service (APHIS) has the authority for administering the National Poultry Improvement Plan (NPIP), the primary purpose of which is to protect the health of the U.S. poultry population. NPIP is a Federal-State-industry cooperative program for the improvement of poultry breeding flocks and products through disease control techniques. Under the

Plan, the regulations in 9 CFR part 56, ''Control of H5/H7 Low Pathogenic Avian Influenza,'' provide for the payment of indemnity for costs associated with the eradication of H5/H7 subtypes of low pathogenic avian influenza.

*Need and Use of the Information:* APHIS will collect information to certify the disease status of poultry through cooperative work performed by the States and industry and for the administration of other regulations intended to protect the health of the U.S. poultry population. The collected information will include sentinel bird identification, the creation and submission of flock testing reports, sales reports, breeding flock participation summaries, salmonella investigation reports, salmonella serotyping requests, and small chick order printouts. If the information is not collected, APHIS would be unable to effectively monitor the health of the nation's poultry population.

*Description of Respondents:* Business or other for-profit; State, local and tribal government.

*Number of Respondents:* 2,317.

*Frequency of Responses:* Recordkeeping; Reporting: On Occasion.

*Total Burden Hours:* 54,946.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–11329 Filed 6–12–07; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2007–0029]**

### Planet Biotechnology, Inc.; Availability of an Environmental Assessment for a Field Release of Nicotiana Hybrids Genetically Engineered To Produce Antibodies

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that we have prepared an environmental assessment for a proposed field release involving a *Nicotiana* hybrid line that has been genetically engineered to produce an antimicrobial antibody that binds to a bacterium (*Streptococcus mutans*) associated with tooth decay in humans. The purpose of this field release is to generate plant biomass from which the antibody will be extracted after harvest. We are making the environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments received on or before July 13, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0029 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instruction 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.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0029, Regulatory Analysis and Development, PPD APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0029.

*Reading Room:* You may read the environmental assessment (EA) and any comments we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The EA is available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/05_35403r_ea.pdf.*

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Margaret Jones, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4880. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On December 21, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–354–03r) from Planet Biotechnology, Inc., of Hayward, CA, for a field trial using a transgenic Nicotiana hybrid. Permit application 05–354–03r describes a *Nicotiana* hybrid line (*Nicotiana tabacum* X *Nicotiana glauca*), designated as 06PBCarHG1, that produces a chimeric antimicrobial antibody (trade name CaroRx)™ that binds to the bacterium (*Streptococcus mutans*) associated with tooth decay in humans. Expression of the gene sequence is controlled by the cauliflower mosaic virus (CaMV) promoter and terminated by NOS from *Agrobacterium tumefaciens* and utilizes the selectable marker NPTII from *Escherichia coli.* Constructs were inserted into the recipient organisms via a disarmed *Agrobacterium tumefaciens* vector system. The antibodies generated from this planting will be extracted after harvest.

The subject *Nicotiana* hybrid is considered a regulated article under the regulations in 7 CFR part 340 because it has been genetically engineered using genetic sequences from plant pathogens.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release of these *Nicotiana* hybrids, we have prepared an environmental assessment (EA). The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing

Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of June, 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7–11481 Filed 6–12–07; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Farm Service Agency

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCIES:** Rural Housing Service (RHS) and Farm Service Agency (FSA), USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies intention to request an extension for a currently approved information collection in support of the programs for Form RD 1940–59, ''Settlement Statement.''

**DATES:** Comments on this notice must be received by August 13, 2007 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Teresa Sumpter, Loan Specialist, Single Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Mail STOP 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, Telephone 202–720–1485. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:**

*Title:* Form RD 1940–59, ''Settlement Statement.''

*OMB Number:* 0575–0088.

*Expiration Date of Approval:* October 30, 2007.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Agencies are requesting an extension of the OMB clearance for Form RD 1940–59, ''Settlement Statement.'' The Real Estate Settlement Procedures Act (RESPA), as amended, required the disclosure of real estate settlement costs to home buyers and sellers. The Secretary of the Department of Housing and Urban Development (HUD) was instructed by the RESPA to develop a standard form for the statement of settlement costs to be used for all federally related transactions. Form RD 1940–59 is similar to the HUD–1 Settlement Statement used by HUD, the Veterans Administration, and the private mortgage industry, with some minor adaptations acceptable under RESPA.

Form RD 1940–59 is completed by Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of RHS loans and credit sales used to purchase or refinance Section 502 Housing, Rural Rental Housing, and Farm Labor Housing. The same parties performing the closing of FSA Farm Ownership loans and credit sales also complete the form. The information is collected to provide the buyer and seller with a statement detailing the actual costs of the settlement services involved in the Agencies financed real estate transactions.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .36 hours per response.

*Respondents:* Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of the Agencies loans and credit sales.

*Estimated Number of Respondents:* 11,928.

*Estimated Number of Responses per Respondent:* 1.8.

*Estimated Number of Responses:* 21,135.

*Estimated Total Annual Burden on Respondents:* 7,530 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. Comments may be sent to Renita Bolden, Regulation and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 6, 2007.

**Russell T. Davis,**

*Administrator, Rural Housing Service.*

Dated: June 6, 2007.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 07–2925 Filed 6–12–07; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Williows, California. Agenda items covered include: (1) Introductions, (2) Public Comment, (3) Status of Current Members, (4) Status of Funding, (5) Status of Legislation, (6) Set up Schedule for Accepting and Voting on Projects, (7) General Discussion, (8) Next Agenda.

**DATES:** The meeting will be held on June 25, 2007, from 1:30 p.m. and end at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Medocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–1815; e-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are

provided and individuals who made written request by June 21, 2007 have the opportunity to address the committee at those sessions.

Dated: June 4, 2007.

**Eduardo Olmedo,**

*Designated Federal Official.*

[FR Doc. 07–2906 Filed 6–12–07; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Request for Proposals: Fiscal Year 2007 Funding Opportunity for 1890 Land-Grant Institutions Rural Entrepreneurial Outreach and Development Initiative

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Initial notice of request for proposals.

**SUMMARY:** Business and Cooperative Programs are administered through USDA Rural Development. USDA Rural Development announces the availability of approximately $1.5 million in competitive cooperative agreement funds. USDA Rural Development hereby requests proposals from 1890 Land-Grant Universities and Tuskegee University (1890 Institutions) for competitively awarded cooperative agreements for projects that support USDA Rural Development's goals and objectives of providing technical assistance for business creation in economically challenged rural communities, for educational programs to develop and improve upon the professional skills of rural entrepreneurs, and for outreach and promotion of USDA Rural Development's programs in small rural communities with the greatest economic need. Project proposals must be designed to overcome currently identified economic problems and lead to sustainable economic development. Project proposals that address both traditional and nontraditional business enterprises are encouraged. This initiative seeks to create a working partnership between USDA Rural Development and the 1890 Institutions through cooperative agreements. A cooperative agreement requires substantial involvement of the Government agency in carrying out the objectives of the project.

Cooperative agreements will be awarded to the project proposals receiving the highest scores as determined by a peer review panel of USDA employees knowledgeable of the subject matter. Awards will be made to the extent that funds are available. However, USDA Rural Development is making no commitment to fund any particular project proposal or to make a specific number of awards. Eligible applicants must provide matching funds equal to at least 25 percent of the total project costs.

**DATES:** Paper copies of applications must be postmarked and mailed, shipped, or sent overnight no later than July 30, 2007, to be eligible for FY 2007 funding. Electronic copies of applications must be received by July 30, 2007, to be eligible for FY 2007 funding. Late applications are not eligible for FY 2007 funding.

**ADDRESSES:** You may obtain application guides and materials for the 1890 Land-Grant Institutions Rural Entrepreneurial Outreach and Development Initiative (1890 REOD Initiative) at the following Internet address: *http://www.rurdev.usda.gov/rbs/oa/1890.htm* or by contacting Edgar L. Lewis, Program Manager, USDA Rural Development, Cooperative Programs, Mail Stop 3252, 1400 Independence Avenue, SW., Washington, DC 20250–3252, telephone: (202) 690–3407, e-mail: *edgar.lewis@wdc.usda.gov.*

Final paper applications for an 1890 REOD Initiative cooperative agreement may be submitted via the U.S. Postal Service to USDA Rural Development, Attention: 1890 REOD Initiative, Mail Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250, or via UPS, FedEx, or similar delivery service to USDA Rural Development, Attention: 1890 REOD Initiative, Room 4016, 1400 Independence Avenue, SW., Washington, DC 20250. The telephone number that should be used on FedEx or similar packages is (202) 720–7558.

Submit electronic cooperative agreement applications using the Grants.gov Web site at *http://www.grants.gov.*

**FOR FURTHER INFORMATION CONTACT:** Edgar L. Lewis, Program Manager, USDA Rural Development, Cooperative Programs, Mail Stop 3252, Room 4204, 1400 Independence Avenue, SW., Washington, DC 20250–3252 telephone: (202) 690–3407, TDD Federal Information Relay Service: 1–800–877–8339, e-mail: *edgar.lewis@wdc.usda.gov,* or visit the program Web site at *http://www.rurdev.usda.gov/rbs/oa/1890.htm.*

**SUPPLEMENTARY INFORMATION:**

### Overview

*Federal Agency:* Rural Business—Cooperative Service.

*Funding Opportunity Title:* 1890 Land-Grant Institutions Rural Entrepreneurial Outreach and Development Initiative (1890 REOD Initiative).

*Announcement Type:* Initial Announcement.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 10.856.

*Key Dates:* Cooperative agreement applications may be submitted on paper or electronically according to the following deadlines.

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 30, 2007, to be eligible for FY 2007 funding. Electronic copies must be received by July 30, 2007, to be eligible for FY 2007 funding. Late applications will not be considered for funding.

### I. Funding Opportunity Description

This solicitation is issued pursuant to 7 U.S.C. 2204b(b)(4) and Executive Order 13256 (February 12, 2002), ''President's Board of Advisors on Historically Black Colleges and Universities.''

Several other Federal statutes and regulations apply to project proposals considered for review and to cooperative agreements awarded. These include, but are not limited to:

7 CFR part 15, subpart A: Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964,

7 CFR part 15b: Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Financial Assistance,

7 CFR part 3015: Uniform Federal Assistance Regulations,

7 CFR part 3017: Governmentwide Debarment and Suspension (Nonprocurement),

7 CFR part 3018: New Restrictions on Lobbying,

7 CFR part 3019: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,

7 CFR part 3021: Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),

7 CFR part 3052: Audits of States, Local Governments, and Non-Profit Organizations.

USDA Rural Development was established under the authority of the Department of Agriculture Reorganization Act of 1994. The mission of USDA Rural Development is to enhance the quality of life for rural

Americans by providing leadership in building competitive businesses, including sustainable cooperatives that can prosper in the global marketplace. USDA Rural Development meets these goals by investing financial resources and providing technical assistance to cooperatives and other businesses located in rural communities and establishing strategic alliances and partnerships that leverage public, private, and cooperative resources to create jobs and stimulate rural economic activity.

The primary purposes of the 1890 REOD Initiative are to encourage 1890 Institutions to provide technical assistance for business creation in economically challenged rural communities, to conduct educational programs that develop and improve upon the professional skills of rural entrepreneurs, and to provide outreach and promote USDA Rural Development programs in small rural communities with the greatest economic need. Project proposals must be designed to overcome currently identified economic problems and lead to sustainable economic development. Project proposals that address both traditional and nontraditional business enterprises are encouraged.

USDA Rural Development will use cooperative agreements with the 1890 Institutions to strengthen the capacity of these communities to undertake innovative, comprehensive, citizen-led, and long-term strategies for community and economic development. The cooperative agreements will be for an outreach and development effort to promote Rural Development programs in targeted underserved rural communities and shall include, but not be limited to:

(a) Developing a business startup program, including technical assistance, to assist new cooperatives and other businesses with new business development, business planning, franchise startup and consulting, business expansion studies, marketing analysis, cash flow management, and seminars and workshops for cooperatives and small businesses;

(b) Developing management and technical assistance plans for:

(1) Assessing cooperative and small business alternatives to traditional agricultural and other natural resource based industries;

(2) Assisting in the development of business plans or loan packages, marketing, or bookkeeping; and

(3) Assisting and training cooperatives and small businesses in customer relations, product development, or business planning and development.

(c) Assessing local community weaknesses and strengths, feasible alternatives to agricultural production, and the necessary infrastructure to expand or develop new or existing businesses;

(d) Providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities;

(e) Conducting seminars to disseminate information to stimulate business and economic development in selected rural communities; and

(f) Conducting outreach through the use of computer technology and maintaining an Internet Web presence that links community leaders and residents to available economic development information.

## II. Award Information

*Type of Award:* Cooperative Agreements.

*Fiscal Year Funds:* FY 2007.

*Approximate Total Funding:* $1,500,000.

*Approximate Number of Awards:* 13.

*Approximate Average Award:* $115,000.

*Floor of Award Range:* None.

*Ceiling of Award Range:* $115,000.

*Anticipated Award Date:* September 21, 2007.

*Budget Period Length:* 12 months.

*Project Period Length:* 12 months.

Funds may not be used to: (a) Pay costs of preparing the application package, (b) fund political activities, (c) pay costs prior to the effective date of the cooperative agreement, (d) provide for revolving funds, (e) pay for construction, (f) conduct any activities where there is or may appear to be a conflict of interest, or (g) purchase real estate.

If an applicant is to receive an award that is less than the amount requested, the applicant will be required to modify the application to conform to the reduced amount before execution of the cooperative agreement. USDA Rural Development reserves the right to reduce or de-obligate any award if acceptable modifications are not submitted by the awardee(s) within 10 working days from the date the application is returned to the applicant. Any modification must be within the scope of the original application.

Throughout the project period, USDA Rural Development's continued commitment to advance funds will be conditioned upon evidence of satisfactory progress by the recipient (as documented in certified acceptable quarterly progress and financial reports) and the determination that continued funding is in the best interest of U.S. Government.

## III. Eligibility Requirements

### *1. Applicant Eligibility*

To be eligible for an award under this program, an applicant must:

(a) Be an 1890 Institution which includes: Alabama A&M University, University of Arkansas-Pine Bluff, Delaware State University, Florida A&M University, Fort Valley State University, Kentucky State University, Southern University and A&M College, University of Maryland-Eastern Shore, Alcorn State University, Langston University, North Carolina A&T State University, Lincoln University (Missouri), South Carolina State University, Tennessee State University, Prairie View A&M University, Virginia State University, West Virginia State University, and Tuskegee University.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.* debarment and suspension). Applicants from ineligible institutions or persons will be rejected in their entirety. USDA Rural Development will accept only one application per Institution under this program. In the event that more than one application is submitted, the 1890 Institution's president will determine the official application for consideration;

(b) Demonstrate that the personnel assigned to the project have the expertise and experience necessary to fulfill the tasks set forth in the project proposal. Applicants should demonstrate a previous record of successful implementation of similar projects;

(c) Demonstrate expertise in the use of computer technologies to provide technical assistance and access to Internet Web sites; and

(d) Submit a completed application as set forth in Section IV.3.

An applicant may subcontract with organizations not eligible to apply provided such organizations are necessary for the conduct of the project. However, the subcontracted amount may not exceed one-third of the total Federal award.

### *2. Project Eligibility*

To be eligible for an award under this program, an applicant must:

(a) Establish that the project eligible beneficiaries are located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) with a demonstrated economic need.

Eligible beneficiaries must also be located in communities that show significant community support for the proposal,

(b) Provide matching funds equal to at least 25 percent of the total project costs, and

(c) Establish and maintain an Internet Web presence linked to the USDA Rural Development Web site. This Web site should contain links to additional economic development sites that will benefit residents and community leaders.

*3. Rural Area Definition*

Rural underserved targeted counties/communities must be an area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of Census using the latest decennial census of the United States.

*4. Matching Funds*

Matching funds may be provided by either the applicant or third party in the form of either cash or in-kind contributions and must be from non-Federal funds. Matching funds must be spent in proportion to the spending of funds received from the cooperative agreement. Applicants must verify that matching funds are available for the time period of the cooperative agreement.

**IV. Application Process**

*1. Application Packages*

If an Institution plans to apply using a paper application, application packages, including the required forms for this funding opportunity, may be obtained from *http://www.rurdev.usda.gov/rbs/oa/1890.htm.* If an Institution is having difficulty accessing the forms online, it may contact USDA Rural Development at (202) 690–3407, FAX: (202) 690–2723, or TDD Federal Information Relay Service: 1–800–877–8339. The application forms and instructions may also be requested via e-mail by sending a message with the contact person's name, mailing address, and telephone number to *edgar.lewis@wdc.usda.gov.* The application forms and instructions will be mailed as quickly as possible. When calling or e-mailing USDA Rural Development, please indicate that you are requesting application forms and instructions for the FY 2007 1890 REOD Initiative.

If an Institution plans to apply electronically, the forms must be obtained from *http://www.grants.gov.*

*2. Application Submission*

Paper applications must be postmarked and mailed, shipped, or sent overnight not later than July 30, 2007. Electronic copies must be received by July 30, 2007. Late applications will not be considered for funding. The applicant assumes the risk of any delay in proposal delivery. Applicants are strongly encouraged to submit completed applications electronically or via overnight mail or delivery service to ensure timely receipt by USDA Rural Development. Receipt of all applications will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses. If the applicant does not receive an acknowledgment within 7 workdays of the submission deadline, please contact the program manager. If USDA Rural Development receives your application after the deadline due to: (a) Carrier error, when the carrier accepted the package with guarantee for delivery by the closing date and time, or (b) significant weather delays or natural disaster, you will be given the opportunity to document these problems. USDA Rural Development will consider the application as having been received by the deadline if your documentation meets these requirements and verifies the delay was beyond your control. Applications submitted via facsimile will not be accepted.

An Institution may submit its application in paper or in an electronic format. If a paper application is submitted, a signed original and two copies of the completed application must be submitted. The original and two copies must include all required forms, certifications, assurances, project proposal documents, and appendices; be signed by an authorized representative of the Institution; contain original signatures; and be submitted unbound.

A paper application submitted via the Postal Service must be addressed to USDA Rural Development, Attention: 1890 REOD Initiative, Mail Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250. A paper application submitted via a commercial carrier such as UPS, FedEx, or similar delivery service must be addressed to USDA Rural Development, Attention: 1890 Initiative, Room 4016, 1400 Independence Avenue, SW., Washington, DC 20250. The telephone number to be used on FedEx or similar packages is (202) 720–7558.

If an application is submitted electronically, the application must be submitted at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

All Federal grant applicants must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants and cooperative agreements. The DUNS number is required whether an applicant is submitting a paper application or using the governmentwide electronic portal Grants.gov. A DUNS number is required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003. Please ensure that your institution has a DUNS number. An Institution may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or online at *http://www.dnd.com.*

If an Institution's application does not contain a DUNS number field, please write the DUNS number at the top of the first page of the application and/or include the DUNS number in the application cover letter.

*3. Completed Application*

To be eligible for funding, an application must contain all of the following elements. Applications that are missing any element or contain an incomplete element will not be considered for funding.

(a) Completed forms.

(1) Form SF–424, ''Application for Federal Assistance.'' In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's DUNS number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds, including in-kind funds, that will be used as matching funds, congressional districts, an answer to the question, ''Is applicant delinquent on any Federal debt?'', the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

(2) Form SF–424A, ''Budget Information—Non-Construction

Programs.'' In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both Federal and matching funds, including in-kind funds.

(3) Form SF–424B, ''Assurances—Non-Construction Programs.'' In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

(4) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

(5) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

(b) Letters of support.

(c) Table of Contents: For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents. Provide page numbers in the Table of Contents where each evaluation criterion is addressed.

(d) Project Executive Summary: A summary of the Project Proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project.

(e) Eligibility Discussion: A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered. The eligibility discussion must address the following:

(1) Applicant Eligibility: The applicant must first confirm it is an 1890 Institution. It must demonstrate that the personnel assigned to the project have the expertise and experience necessary to fulfill the tasks set forth in the project proposal, including the use of computer technologies and technical assistance.

(2) Project Eligibility: The applicant must describe how the project's eligible beneficiaries are located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) with a demonstrated economic need and how eligible beneficiaries are also located in communities that show significant community support for the proposal. The applicant must show how it is to provide matching funds equal to at least 25 percent of the total project costs. The applicant must provide the address of the Internet Web presence linked to the USDA Rural Development Web site or demonstrate how such a link will be developed.

(f) Project Proposal: The application must contain a narrative statement describing the nature of the proposed project. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form. The proposal must include at least the following:

(1) Project Title Page: The Title Page must include the title of the project, names of principal investigators, and applicant organization.

(2) Introduction: A concisely worded justification or rationale for the proposal must be presented. Summarize the social and economical statistical data (income, population, employment rate, poverty rate, educational attainment, etc.) for the project area that substantiates the need for the initiative. Specify whether the target area includes a Federally designated Empowerment Zone/Enterprise Community, Champion Community, Federally-recognized Indian Reservation, or other Federally declared economic disaster area. An applicant must address the ''Economic Need of Community'' evaluation criterion as described in Section VII.1.(c).

(3) Workplan: Discuss the approach (strategy) to be used in carrying out the proposed project outreach and achieving the proposed objectives. Address the ''Statement of Work'' evaluation criterion as described in Section VII.1.(e). A description of any subcontracting arrangements to be used in carrying out the proposed project must be included. The workplan also must include:

(i) Overview: Identify and discuss the specific goals and objectives of the proposed project and its impact on the proposed beneficiaries;

(ii) Timeframes: Develop a tentative timeline for completing the major tasks outlined in the project proposal;

(iii) Project Outcomes/Impacts: Describe and quantify the expected outcomes/impacts of the proposed project, including the businesses created, professionals trained, jobs created or assisted, conferences and seminars to be conducted, and the expected number of participants, loans packaged, etc.;

(iv) Recipient Involvement: Identify the person(s) responsible for performing the project tasks; and

(v) USDA Rural Development Involvement: Identify proposed USDA Rural Development responsibilities for assisting and monitoring project tasks;

(4) Budget Narrative: Provide a detailed budget justification, showing both Federal and applicant's matching funds, including in-kind contributions. Provide a budget to support the workplan, showing all sources and uses of funds during the project period. Detail and document both cash and in-kind funding by sources. Note that only goods and services for which no expenditure is made can be considered in-kind. If the applicant is paying for the goods and services as part of the matching funds contribution, the expenditure is considered a cash match and should be verified as such.

(5) Certification of Matching Funds: Certify that matching funds will be available at the same time Federal funds are anticipated to be spent and that matching funds will be spent on a pro rata basis with Federal funds. Please note that this certification is a separate requirement from the verification of Matching Funds requirement.

(6) Leveraging Funds: Discuss in narrative form how the Institution will use Federal, State, private, and other sources of funds and resources to leverage the proposed project.

(7) Coordination and Management Plan: Describe how the project will be coordinated among the various participants, the nature of the collaborations and benefits to participants, communities, applicants, and Rural Development. Describe plans for the management of the project to ensure its proper and efficient administration. Discuss any steering committees and/or Agreements developed to assist with managing the project. Describe the proposed scope of Rural Development's involvement in the project.

(8) Technology Outreach: The project proposal must address the applicant's ability to deliver computer technology to the targeted rural communities and maintain computer Internet Web sites linking community leaders and residents to available economic development information. Address the ''Digital Technology Outreach'' evaluation criterion as described in Section VII. 1.(f).

(9) Key Personnel Support: The roles and responsibilities of key personnel used to carry out the goals and objectives of the proposal should be clearly described. An abbreviated curriculum vitae should be provided for all key personnel.

(10) Facilities or Equipment: Identify where the project will be located (housed) and what additional equipment is needed or already available to carry out the specific objectives of the project.

(11) Previous Accomplishments: Summarize the Institution's previous

outreach and development accomplishments, including success stories from previous years for projects funded by USDA Rural Development or similar outreach or development experiences. First-time applicants should discuss previous similar outreach accomplishments. Address the ''Previous Accomplishments'' evaluation criterion as described in Section VII.1.(d).

(12) Local and USDA Rural Development State Office Support: Provide letters of support from the local community, such as businesses, educational institutions, local governments, community-based organizations, etc. Letters of support should demonstrate commitments for tangible resources and/or assistance. Include any letter from the appropriate USDA Rural Development State Office, evidencing its input to the proposal or other involvement. Identify and discuss tangible support contained in the letters. Evaluation points will be based on the quality (tanagible support) of the letters, not quantity.

(13) Additional information: Provide any additional information that demonstrates commitment for tangible resources and/or that supports the proposal. Additionally, the applicant is encouraged to provide any strategic plan that has been developed to assist cooperative and business development or entrepreneurship for the targeted communities.

## V. Intergovernmental Review of Applications

Executive Order (EO) 12372 does not apply to this program.

## VI. Funding Restrictions

Public Law 109–97, Sec. 708, states ''No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total cost of the agreement when the purpose of such cooperative arrangement is to carry out programs of mutual interest between the two parties.'' Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding. Cooperative agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this agreement; or
7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

Other funding restrictions are identified in Section III.

## VII. Application Review

*1. Criteria*

Project proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. The points assigned provide an indication of the relative importance of each section and will be used by the reviewers in evaluating the proposals. Points do not have to be awarded for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to any proposal to obtain the broadest geographic distribution of the funds, ensure a broad diversity of project proposals, or ensure a broad diversity in the size of the awards.

(a) Support of Local Community (Up to 10 points): This criterion evaluates the support of local government, educational, community, and business groups. Higher points will be awarded for proposals demonstrating broad support from all components of the communities served, particularly cooperative groups. Broad support is demonstrated by tangible contributions, such as providing volunteers, computers, and transportation or co-sponsoring workshops and conferences. Points will be awarded based on the level of tangible contribution in comparison to the size of the award. Tangible support must be stated in letters from supporting entities.

(b) Matching Funds/Leveraging (Up to 10 points): This criterion evaluates the extent to which the Institution has the capacity to support the project with matching funds and leveraging additional funds and resources from State, private, public, and nonprofit sources to carry out this outreach and development initiative.

A maximum of 10 points will be awarded based upon the amount the proposal exceeds the minimum 25 percent matching requirement. Applicants will be required to provide matching funds in support of this project. Evidence of matching funds availability must be provided. Funds or equivalent in-kind funding must be available at the time at which the cooperative agreement is entered. Matching funds points will be awarded as listed below:

>25 percent to 35 percent match, 2 points
>35 percent to 50 percent match, 5 points
>50 percent to 75 percent match, 7 points
>75 percent match, 10 points

(c) Economic Need of Community (Up to 15 points): This criterion evaluates the economic need of the targeted communities.

Five points will automatically be awarded to project proposals with at least one of the beneficiary communities located in a targeted community(s): Federally designated Empowerment Zones, Enterprise Communities, Champion Communities, Federally-recognized Indian Reservations, and other Federally declared economically depressed or disaster areas. The application must state the name(s) and location(s) of the economically depressed community(s) and the type(s) of targeted community designation (*i.e.*, Empowerment Zone).

Up to a maximum of 10 additional points may be awarded based upon the applicant's ability to identify and demonstrate other economic factors that would cause these communities to be targeted for special economic and community development, such as, but not limited to, unemployment rates, poverty rates, education levels, and job availability. These and other factors will be evaluated and compared to the respective State rates. An applicant must provide sufficient information for the panel to properly evaluate and rate this criterion.

(d) Previous Accomplishments (Up to 10 points): This criterion evaluates the applicant's previous accomplishments with this initiative and/or its demonstrative capacity to conduct similar projects.

One point will be awarded to an Institution for each year it has been awarded a cooperative agreement under this program up to a total of 5 years. An applicant must provide evidence of satisfactorily completing the cooperative agreement for each year for which credit is claimed. Satisfactorily completing the cooperative agreement includes, completing all objectives in the workplan, submitting all required program and financial reports in a timely manner, and within budget for the project. Applicants with less than 5 recent years of awards in this program may receive up to the maximum 5 points by highlighting the applicant's previous performance in each of the past 5 years on other projects with cooperative and business development and outreach objectives. The applicant

should discuss the potential impact of the project upon the targeted underserved rural communities, as well as describing previous similar outreach and development work.

Up to a maximum of 5 additional points may be awarded based upon an applicant's ability to document the positive impact of its project upon the targeted underserved rural communities. Positive entrepreneurial developments should be emphasized. Points will be awarded to applicants who demonstrate that the project's technical assistance resulted in the creation of a business(s) in an economically challenged community or that its educational programs developed or improved upon the professional skills of rural entrepreneurs. The applicant must provide specific information as to the specific businesses created and/or professional educational programs offered.

(e) Statement of Work (up to 35 points): This criterion evaluates the degree to which the proposed project addresses the major purposes for the 1890 REOD Initiative. Points will be awarded according to the degree to which the Statement of Work reflects: (1) Innovative strategies for providing technical assistance for business creation in economically challenged rural communities, (2) educational programs that develop and improve the professional skills of rural entrepreneurs, and (3) outreach and promotion of USDA Rural Development programs.

Up to a maximum of 15 points will be awarded to proposed projects that have a clearly and concisely stated workplan detailing goals and objectives, timetables, expected results, and measurable outcomes for providing technical assistance for business creation in economically challenged rural communities. The greatest number of points will be awarded to those proposed projects that demonstrate innovative and creative ways to accomplish these goals.

Up to a maximum of 10 additional points will be awarded to proposed projects that have a clearly and concisely stated workplan detailing goals and objectives, timetables, expected results, and measurable outcomes for educational programs to develop and improve the professional skills of rural entrepreneurs (*i.e.*, sustainable agricultural practices, real estate sales, real estate appraising, accounting for small entrepreneurs, etc.). The greatest number of points will be awarded to those proposed projects that demonstrate innovative and creative ways to accomplish these goals.

Up to a maximum of 10 additional points will be awarded to proposed projects for outreach and promotion of USDA Rural Development's programs in small rural communities with the greatest economic need. The greatest number of points will be awarded to those proposed projects that demonstrate innovative and creative ways to accomplish these goals.

All proposals must integrate substantial USDA Rural Development involvement.

(f) Digital Technology Outreach (Up to 10 points): This criterion evaluates the applicant's experience and capacity to provide outreach and assistance to targeted underserved rural communities through use of computer technologies.

A maximum of 10 points will be awarded based upon the applicant's demonstrated capacity to promote innovations and improvements in the delivery of computer technology benefits, including a Web presence to underserved rural communities whose share in these benefits is disproportionately low. The Web site should be operational with a link to the USDA Rural Development Web site and populated with success stories and economic development information.

(g) Coordination and Management of the Project (Up to 10 points): This criterion evaluates the applicant's demonstrated capacity to coordinate and manage the proposed project among the various stakeholders.

Up to a maximum of 5 points will be awarded based upon the applicant's ability to demonstrate a broad and collaborative involvement with the respective USDA Rural Development State Office on the proposed project. This involvement and collaboration should include, but not be limited to: (1) Evidence of any USDA Rural Development State Office input in and review of the applicant's proposal, (2) a detailed plan for the USDA Rural Development State Office's continued participation in the proposed project that includes specific participatory tasks, and (3) a detailed plan as to how Rural Development programs can be integrated into the proposed project.

Up to a maximum of 5 additional points will be awarded based upon applicant's demonstrated ability for overall management of the project, which include submitting timely program and financial reports, and completing workplan goals/objectives as stated in the proposal. Applicants must document in the proposal that all required reports have been submitted.

*2. Selection Process*

Each application will be evaluated in a two-part process. First, each application will be reviewed to ensure that both the applicant and project meet the eligibility requirements set forth in Section III. All applicants determined to be eligible will be scored based upon the criteria set forth in Section VII. 1. Each eligible application will be scored by at least three expert reviewers. The individual scores for each application will be tallied, and applications receiving the highest scores will be recommended to the Administrator or Acting Administrator, Rural Business-Cooperative Service, for award. The Administrator or Acting Administrator has the final authority to award discretionary points in accordance with Section VII. 1. and determine the applications to be funded. If a tie score results after the proposals have been rated and ranked, the tie will be resolved by the proposal with the largest matching funds as a percent of the Federal amount of the selected award.

## VIII. Award Administration

*1. Award Notification*

Upon completion of the review process, successful applicants will be notified, in writing, by the USDA Rural Development National Office of its award. Each successful applicant will receive a cooperative agreement for signature by the Institution's president or designee. The document will become binding upon execution by the appropriate USDA official.

Unsuccessful applicants will be notified, in writing, of the results of the review.

*2. Advance of Funds Requirements*

Requests for advance of funds must be submitted to the National Office on a quarterly basis on a completed Form SF–270, ''Request for Advance or Reimbursement.'' A completed Form SF–269 (Long Form), ''Financial Status Report,'' must be submitted with each advance of funds request.

*3. Project Reviews*

USDA Rural Development State Office representatives will conduct semiannual onsite reviews of award recipients, as well as any additional reviews deemed necessary by the National Office.

*4. Reporting Requirements*

During the term of the cooperative agreement, each award recipient must submit quarterly progress reports and a final report detailing the tasks performed and results accomplished to the National and appropriate State

Offices. The report should also include a summary at the end of the report with the following elements to assist in documenting the annual performance measures of the 1890 program:

(a) Number of businesses/cooperatives started/expanded in the targeted areas;

(b) Number of currently active businesses/cooperatives in the targeted areas that were assisted;

(c) Number of individuals/businesses/cooperatives/organizations assisted (training, technical assistance, feasibility studies, etc.); and

(d) Number of individuals/businesses/cooperatives/organizations assisted with USDA Rural Development loan or grant programs or other similar programs.

Quarterly reports must be submitted on or prior to January 31, April 30, July 31, and October 31, 2008. A final report must be submitted within 90 days of the date of the project's completion. Reports may be submitted in hard copy original or an electronic copy that includes all required signatures. Failure to submit satisfactory, timely reports may result in suspension or termination of current award and/or result in making your institution ineligible for future awards from this program.

Upon the request of USDA Rural Development, the award recipient will submit manuscripts, videotapes, software, or other media identified in project proposals. USDA Rural Development retains those rights delineated in 7 CFR 3019.36.

*5. Administrative Requirements*

Award recipients are responsible for:

(a) Completing the objectives defined in the proposed workplan.

(b) Maintaining up-to-date project records during the term of the agreement.

(c) Maintaining an accounting of Federal and matching fund expenditures, including in-kind contributions. Award recipients must submit to the National Office a completed Form SF–269 (Long Form) with each advance of funds request and within 90 days of the project's completion.

(d) Immediately refunding to USDA Rural Development, at the end of the agreement, any balance of unobligated funds received from USDA Rural Development.

(e) Providing matching funds or equivalent in-kind contribution in support of the project, at least to the level agreed to in the accepted proposal.

(f) Participating in the annual or biannual USDA Rural Development Entrepreneurship and Information conferences/workshops when planned.

(g) Developing a program of cooperative and business startup and technical assistance, in cooperation with local businesses, that will assist with new company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing analysis, cash flow management, and seminars and workshops for cooperatives and small businesses.

(h) Providing office space, equipment, and supplies for all personnel assigned to the project.

(i) Developing management and technical assistance plans in cooperation with the USDA Rural Development State Office that will:

(1) Assess cooperative and small business alternatives to agriculture and other natural resources-based industries;

(2) Assist in the development of business plans and loan packages, marketing, bookkeeping assistance, and organizational sustainability; and

(3) Provide technical assistance and training, in cooperation with the USDA Rural Development State Office, for customer relations, product development, and business planning and development.

(j) Assess local community needs, weaknesses and strengths, feasible alternatives to agriculture production, and the needed infrastructure to expand or develop new or existing businesses. The plans for any such studies must be submitted to the USDA Rural Development National Office for approval prior to the study being conducted.

(k) Provide community leaders with advice and recommendations, in cooperation with the USDA Rural Development State Office, regarding best practices in community economic development stimulus programs for their communities.

(l) Develop digital technology outreach and establish and maintain an Internet Web site to link community leaders and residents to available economic development information. USDA Rural Development must be included in the link to economic development information.

(m) Assure and certify that it is in compliance with, and will comply in the course of the agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in 7 CFR parts 3015 and 3019.

(n) Use Federal funds only to pay meeting-related travel expenses when employees are performing a service of direct benefit to the Government and in direct furtherance of the objectives of the proposed agreement. Federal funds cannot be used to pay non-Federal employees to attend meetings.

(o) Not commingle or use program funds for administrative expenses to operate an intermediary relending program (IRP).

(p) Submit to USDA Rural Development National Office, in writing, any request for revising the project work plan, including key personnel changes, budget reallocations, or requesting a no-cost extension amending the cooperative agreement.

(q) Assist the USDA Rural Development State Office in conducting a semiannual on-site review of the recipient's project.

(r) Collaborate, as needed, with the USDA Rural Development National and State Offices in performing the tasks in the agreement and providing the Rural Development National Office with the information necessary for the Agency to fulfill its responsibilities in the agreement.

(s) Sign an Agency approved Cooperative Agreement.

USDA Rural Development is responsible for:

(a) Monitoring the program as it is being implemented and operated, including monitoring of financial information, to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(b) Terminating activity, after written notice, if tasks are not met.

(c) Reviewing and approving changes to key personnel.

(d) Providing technical assistance as needed.

(e) Approving the final plans for any community business workshops; cooperative, business, and economic development sessions; and training workshops to be conducted by the recipient.

(f) Providing reference assistance, as needed, to the recipient for technical assistance given on a one-on-one basis to entrepreneurs and startup businesses.

(g) Reviewing and commenting on strategic plans developed by recipients for targeted areas.

(h) Reviewing economic assessments made by the recipient for targeted counties, enabling USDA Rural Development to determine the extent to which its programs are beneficial.

(i) Carefully screening projects to prevent First Amendment violations.

(j) Monitoring the program to ensure that a Web site link to USDA Rural Development is established and maintained.

(k) Ensuring that USDA Rural Development State Offices conduct semiannual on-site reviews and submit written reports to the National Office.

(l) Participating in 1890 outreach and development program workshops, seminars, and conferences as needed.

(m) Providing any other work agreed to by USDA Rural Development in the Cooperative Agreement.

### IX. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Edgar L. Lewis, Program Manager, USDA Rural Development, Cooperative Programs, Stop 3252, Room 4204, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, e-mail: *edgar.lewis@wdc.usda.gov*.

### X. Paperwork Reduction Act

The paperwork burden associated with this initiative has been cleared by the Office of Management and Budget under OMB Control Number 0570–0041.

Dated: June 7, 2007.

**Jackie J. Gleason,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. E7–11408 Filed 6–12–07; 8:45 am]

**BILLING CODE 3410–XY–P**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Five-Year Record Retention Period

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 13, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the internet at *DHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This five year record retention period corresponds with the five year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the EAR prior to the expiration of the five-year statute of limitations.

### II. Method of Collection

Recordkeeping requirement only.

### III. Data

*OMB Number:* 0694–0096.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 291,437.

*Estimated Time per Response:* 1 second to 1 minute per response.

*Estimated Total Annual Burden Hours:* 253.

*Estimated Total Annual Cost:* No start-up capital expenditures.

### 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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 7, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–11372 Filed 6–12–07; 8:45 am]

**BILLING CODE 3510–DT–P**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 13, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, (or via the Internet at *DHynek@doc.gov*.).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This collection of information provides a means to authorize approved imports to the U.S. to be transhipped to another destination instead of being imported to the U.S. as approved on the Import Certificate.

### II. Method of Collection

Written report is required.

### III. Data

*OMB Number:* 0694–0009.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 1.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 1.

*Estimated Total Annual Cost:* No start-up capital expenditures.

### 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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 7, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–11373 Filed 6–12–07; 8:45 am]

BILLING CODE 3510–DT–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; U.S.-Canada Albacore Treaty Reporting System

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), DOC.

**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 August 13, 2007.

**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 Chris Fanning, (562) 980–4198 or *Chris.Fanning@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The National Marine Fisheries Service (NMFS) Southwest Region (SWR) manages the U.S.-Canada Albacore Tuna Treaty of 1981 (Treaty). Owners of vessels that fish from U.S. West Coast ports for albacore tuna will be required to notify NMFS SWR of their desire to be on the list of vessels provided to Canada each year indicating vessels eligible to fish for albacore tuna in waters under the jurisdiction of Canada. Additionally, vessel operators are required to report in advance their intention to fish in Canadian waters prior to crossing the maritime border as well as to mark their fishing vessels to facilitate enforcement of the effort limits under the Treaty. The vessel operators are also required to maintain and submit a logbook of all catch and fishing effort. The regulations implementing the reporting and vessel marking requirements under the Treaty are at 50 CFR 300.172–300.176.

The estimated burden below includes hours to complete the logbook requirement, although it is assumed that most if not all of the respondents already fill out the required logbook under the mandatory West Coast Highly Migratory Species Fishery Management Plan (HMS FMP) (Form No.: 88–197, OMB Control No. 0648–0223, expires 05/31/2008). Duplicate reporting under the Treaty and HMS FMP is not required. Most years, there will be much less fishing (and thus less reporting) under the Treaty than the level on which the estimate is based.

### II. Method of Collection

Requests to be placed on the vessel eligibility list may be made in writing via mail or fax, by e-mail, or by telephone. Communications to comply with 'hail in' and 'hail out' requirements are made via ship to shore radio or via telephone and are compiled in an electronic database accessible by NMFS via a web interface. Vessel marking requirements entail painting the letter 'U' immediately after the U.S. Coast Guard documentation identification number already on the vessel. Logbooks are maintained in pre-printed paper format and submitted via mail.

### III. Data

*OMB Number:* 0648–0492.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time per Response:* 5 minutes to make the request to be placed on the eligible list per year; 10 minutes for each set of two hail reports for border crossings per year; 5 minutes to make the required vessel markings per year; and an estimated 2 and one-half hours for logbook maintenance and submission.

*Estimated Total Annual Burden Hours:* 283.

*Estimated Total Annual Cost to Public:* $3,955.

### 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: June 7, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–11375 Filed 6–12–07; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Correction to Proposed Information Collection; Comment Request; Omnibus Notice for Compliance of National Marine Fisheries Service Permits With the Debt Collection Improvement Act of 1996

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Correction.

This is to correct the notice of the same title published June 6, 2007, Volume 72, page 31289.

In addition to the information collections listed on June 6, 2007, this

action applies to the following NOAA National Marine Fisheries Service permit collections:

**OMB Control No.**

1. 0648–0327, Atlantic Highly Migratory Species Permit Family of Forms.
2. 0648–0194, Antarctic Marine Living Marine Resources Conservation and Management Measures.
3. 0648–0387, International Dolphin Conservation Program.

The sentence following the original list should now read ''All but five of these fifteen permit collections currently require some or most of this information.''

All other pertinent information still applies.

Dated: June 7, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–11374 Filed 6–12–07; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA73**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Regional Administrator, Southwest Region, NMFS has made a preliminary determination that an application for an Exempted Fishing Permit (EFP) warrants further consideration. The application was submitted to NMFS by a California-based commercial fisherman requesting an exemption for a single vessel from the longline fishing prohibitions within the U.S. Exclusive Economic Zone (EEZ) off the west coast during the 2007 fishing year beginning mid-September 2007. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). However, further review and consultation is necessary before a final determination is made to issue the EFP. Therefore, NMFS proposes to review the EFP and requests public comment on the application.

**DATES:** Comments must be received by July 13, 2007.

**ADDRESSES:** You may submit comments on this notice, identified by RIN 0648–XA73 by any of the following methods:

- E-mail: *LonglineEFP.SWR@noaa.gov*. Include the RIN in the subject line of the message.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Following the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.
- Fax: (562) 980–4047.

**FOR FURTHER INFORMATION CONTACT:** Mark Helvey, Southwest Region, NMFS, (562) 980–4040.

**SUPPLEMENTARY INFORMATION:** An application for an EFP was submitted to the Pacific Fisheries Management Council (Council) by Peter Dupuy, a commercial fishing vessel owner, in March, 2006. The EFP would exempt a single vessel from following the gear and fishing restrictions at 50 CFR 660.712(a) implementing the HMS FMP that prohibit owners and operators of vessels registered for use of longline gear from using longline gear to fish for or target HMS within the U.S. EEZ. The applicant applied for the EFP with the intent to conduct an exploratory test fishery with a single vessel to gather information on the economic viability and environmental effects, including the potential impacts to protected species and non-target finfish interactions, of fishing for swordfish in the West Coast EEZ.

At its April 2007, meeting, the Council, with advice from its HMS Management Team and HMS Advisory Subpanel, adopted a preferred alternative for conditioning the EFP and forwarded that alternative to NMFS, recommending that the agency review the proposed EFP and, if consistent with Federal law, issue the permit. The Council recommended that the applicant be subject to a interaction cap of one short-finned pilot whale and 12 striped marlin, and not fish off the state of Washington. The Council also recommended that the fishery be managed through limits on the amount of incidental take of protected species that may be exposed to and adversely affected by this action that are to be established based upon section 7 consultations under the Endangered Species Act by NMFS for marine mammals and sea turtles and by the U. S. Fish and Wildlife Service for seabirds. If any one of the limits set by these consultations is reached by the fishery authorized by the EFP, the permit would be immediately revoked. The EFP would require 100 percent NMFS observer coverage for all fishing under the EFP. The Council's recommendations, described above, would be established as permit conditions.

If approved, the EFP would authorize a single vessel to longline fish in the EEZ off of Oregon and California. Under the proposed terms and conditions of the EFP, the vessel would target swordfish utilizing shallow-set longline gear which is set at a shallower depth (<100 m) than deep-set longline gear which is typically set in the deeper thermocline zone (~300 400 m) for tunas. The applicant would be allowed a maximum of four trips between September and December, 2007, and a maximum of 14 sets per trip. Fishing will neither be allowed within 30 nautical miles of the coastline nor within the Southern California Bight as defined by the applicant. Utilizing shallow-set longline gear configuration, the mainline cannot exceed 100 km and no more than 1,200 hooks can be deployed per set. The use of 18/0 circle hooks with a 10 ° offset and the use of mackerel or mackerel-type bait (as described at 50 CFR 665.33(f) and (g), respectively) is required. To reduce potential interactions with seabirds, gear would not be set until one hour after local sunset and must be fully deployed before local sunrise with attached time/depth recorders to estimate fishing depth. Utilization of a NMFS-certified shark de-hooking device will be required to improve the post-release survivability of incidentally captured sharks.

Aside from the exemptions described above, the vessel fishing under the EFP would be subject to all other regulations implementing the HMS FMP, including measures to protect sea turtles, marine mammals, and sea birds.

The EFP application would be effective for 2007 only. In accordance with NOAA Administrative Order 216–6, an appropriate National Environmental Policy Act document will be completed prior to the issuance of the EFP. A draft environmental assessment on the EFP was presented to the Council and public in April 2007. Further review and consultation is necessary before a final determination is made to issue the EFP. As required in Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), NMFS is engaged in formal consultation to determine if the proposed action is likely to jeopardize the continued

existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 6, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–11192 Filed 6–12–07; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 07–15]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Secretary Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 7, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

JUN 05 2007

**In reply refer to:**
**I-07/002905**

**The Honorable Nancy Pelosi**
**Speaker of the House of Representatives**
**Washington, DC 20515-6501**

**Dear Madam Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-15, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Finland for defense articles and services estimated to cost $56 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.**

**Sincerely,**

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

**Transmittal No. 07-15**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) Prospective Purchaser: Finland

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $51 million |
| Other | $ 5 million |
| TOTAL | $56 million |

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 100 All-Up-Round AIM-9X SIDEWINDER Missiles, Organizational and Intermediate-Level Maintenance AIM-9X spares; Section-Level shipping missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Navy (AAJ)

(v) Prior Related Cases, if any: FMS Case AAI - $43 million - 13Jun06

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Finland – AIM-9X Sidewinder Missiles

The Government of Finland has requested a possible sale of up to 100 All-Up-Round AIM-9X SIDEWINDER Missiles, Organizational and Intermediate-Level Maintenance AIM-9X spares; Section-Level shipping missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $56 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in Europe.

Finland intends to integrate the AIM-9X SIDEWINDER missile onto its existing fleet of F/A-18 aircraft. Incorporation of the missiles onto Finnish F/A-18 aircraft will significantly enhance the Air Force's current air-to-air intercept capability. Finland, which already has SIDEWINDER missiles in its inventory, will have no difficulty absorbing these items.

The prime contractor will be Raytheon Systems Corporation, Tucson, Arizona. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this sale will not require the assignment of any additional U. S. Government personnel in-country. However, temporary travel to Finland will be required for in-country training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-15

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-9X represents a substantial increase in missile acquisition and kinematics performance over previous AIM-9 variants. The missile includes a high off bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Joint Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the AIM-9X missile. The software continues to be modified during the testing phase in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, software, and some aspects related to operational performance. Maintenance training documentation is unclassified up to and including missile sectionalization training.

2. The external view of the AIM-9X Sidewinder Missile is Unclassified and is not sensitive. The seeker/guidance and control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants. Manuals and technical documents for the AIM-9X that support the ability to integrate with aircraft sensors are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon systems effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–2917 Filed 6–12–07; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 07–23]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–165 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–23 with attached transmittal and policy justification.

Dated: June 7, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–M**

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

JUN 05 2007

**In reply refer to:**
**I-07/004880**

**The Honorable Nancy Pelosi**
**Speaker of the House of Representatives**
**Washington, DC 20515-6501**

**Dear Madam Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-23, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Philippines for defense articles and services estimated to cost $96 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.**

**Sincerely,**

Richard J. Millies
Deputy Director

**Enclosures:**
1. **Transmittal**
2. **Policy Justification**

**Same ltr to:**

| House | Senate |
|---|---|
| Committee on Foreign Affairs | Committee on Foreign Relations |
| Committee on Armed Services | Committee on Armed Services |
| Committee on Appropriations | Committee on Appropriations |

**Transmittal No. 07-23**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended (U)**

(i) Prospective Purchaser: Philippines

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $96 million |
| TOTAL | $96 million |

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Harris High Frequency/Very High Frequency (VHF) radio systems, which include 6,356 Advanced Tactical VHF Handheld radio systems, 2,019 20-Watt High Frequency (HF) Man Pack radio systems, ancillary equipment, spare and repairs parts, support equipment, personnel training and training equipment, publications, U.S. Government and contractor engineering and logistics services and other related elements of program support.

(iv) Military Department: Army (VBD)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress:

JUN 05 2007

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION (U)

### The Philippines - High Frequency/Very High Frequency Radio Systems

The Government of the Philippines has requested a possible sale of Harris High Frequency/Very High Frequency (VHF) radio systems, which include 6,356 Advanced Tactical VHF Handheld radio systems, 2,019 20-Watt High Frequency Man Pack radio systems, ancillary equipment, spare and repairs parts, support equipment, personnel training and training equipment, publications, U.S. Government and contractor engineering and logistics services and other related elements of program support. The estimated cost is $96 million.

This proposed sale is consistent with the foreign policy and national security of the U. S. as it helps to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in Asia Pacific.

This proposed sale will assist the Philippines in fulfilling its strategic commitments to the U.S. by assisting its efforts to destabilize transnational terrorists' strongholds within its borders; and by improving communications ability and internal command and control while operating in the country's mountain ranges. The Philippines will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor is Harris Corporation of Rochester, New York. There are no known offset agreements proposed in connection with this potential sale.

The number of U.S. Government personnel and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–2919 Filed 6–12–07; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity

**AGENCY:** Department of Defense.

**ACTION:** Notice of a disease management demonstration project for TRICARE Standard beneficiaries.

**SUMMARY:** This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled Disease Management Demonstration Project for TRICARE Standard Beneficiaries. Although there are many similarities between TRICARE Standard and TRICARE Prime as to the preventive health care services that may be provided in the current benefit, there are services that are expressly excluded under TRICARE Standard that may be offered under TRICARE Prime which are the essence of a disease management (DM) program. TRICARE currently requires the Managed Care Support Contractors (MCSCs) to provide ''disease management services'' under the current contracts, without specific guidance. Based upon the current legal statutes authorizing preventive health care services, TRICARE must conduct a demonstration under 10 U.S.C. 1092 in order to offer TRICARE Prime benefits to TRICARE Standard beneficiaries under the DM program already in existence. (Section 734 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (henceforth NDAA 2007) does not give any broader authority than exists today). Under this demonstration, disease management services will be provided to TRICARE Standard beneficiaries as part of the current MHS DM programs. The demonstration project will enable the MHS to provide uniform policies and practices on disease and chronic care management throughout the TRICARE network. Additionally, the demonstration will help determine the effectiveness of DM programs in improving the health status of beneficiaries with targeted chronic diseases or conditions, and any associated cost savings.

**EFFECTIVE DATE:** April 1, 2007. This demonstration will remain in effect until March 31, 2009.

**ADDRESSES:** TRICARE Management Activity (TMA), Office of the Chief Medical Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

**FOR FURTHER INFORMATION CONTACT:** CDR Cynthia Gantt, Office of the Chief Medical Officer—TRICARE Management Activity, telephone (703) 681–0064.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Military Health System (MHS) is a $33 billion dollar enterprise, consisting of 76 military hospitals, over 500 military health clinics, and an extensive network of private sector health care partners, which provides medical care for over 9 million beneficiaries and active duty service members. Of these beneficiaries, approximately 5 million are classified as TRICARE Prime enrollees and 4.2 million are TRICARE Standard participants.

The MHS is facing significant fiscal challenges in the coming years due to the rising costs of providing health care, coupled with recent expansions to the pool of eligible beneficiaries. The MHS recognizes these challenges and has implemented several new initiatives to help control costs. Disease management (DM) programs have become popular in the private sector as a means to accomplish this goal, with varying levels of effectiveness having been documented. The MHS has the opportunity to become a leader in DM, due to its population of long term or life time eligible beneficiaries and robust information systems.

### B. MHS Disease Management Program

On September 1, 2006, the MHS implemented a new DM initiative based on a consistent approach across all three managed care regions, focusing on asthma and congestive heart failure. These programs run by the Managed Care Support Contractors (MCSCs) include beneficiaries from military treatment facilities and those seen by civilian healthcare providers within the TRICARE network. In this revised uniform approach to DM, the Government, with the assistance of a program evaluation contractor, provides the MCSCs risk-stratified patient lists and conducts a formal evaluation across all three Regions using national benchmarks.

TRICARE's approach to disease management is two-fold: (1) Keep the well healthy with a focus on healthy lifestyles, disease prevention and health promotion and (2) maintain an active disease management program for high risk beneficiaries with specific chronic disease conditions. Evidence-based clinical practice guidelines (CPGs) and educational resources developed jointly by the Departments of Defense (DoD) and Veterans Affairs (VA) are used in both the military treatment facility and MCSC DM programs.

The MHS DM program directly supports the MHS strategic goal of effective patient partnerships by advocating the use of evidence-based practice guidelines and emphasizing patient self management skills. The goals of the DM initiatives are to improve clinical outcomes, increase patient and provider satisfaction, and ensure appropriate utilization of resources.

### C. Current TRICARE Standard Benefit

Under 10 U.S.C. 1079(a)(13), TRICARE may cost share only services or supplies that are medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by an authorized provider. There is additional statutory authority that describes what are preventive health care services. Under 10 U.S.C. 1074d, members and former members of the uniformed services are entitled to preventive health care services including cervical cancer screening, breast cancer screening, and screening for colon and prostate cancer, all at intervals and using methods the Secretary considers appropriate. These same services are available to them and all dependents in MTFs under 10 U.S.C. 1077(a)(14), and to all covered beneficiaries under TRICARE under 10 U.S.C. 1079(a)(2). Under 10 U.S.C. 1079(a)(2)(B), other health promotion and disease prevention visits for those over six years of age are authorized under TRICARE Standard only when done in connection with immunizations or with diagnostic or preventive cancer screening tests. (See also, 32 CFR 199.4(g)(37)).

Additionally, the TRICARE Prime program is authorized by 10 U.S.C. 1097–1099. The statutes authorize Prime to ''provide better services than those provided by [Standard]'', and the Secretary ''shall prescribe regulations to carry out this section.'' The regulations that directly impact the TRICARE Prime program are 32 CFR 199.17 and 199.18. Under 32 CFR 199.18(b)(2), the following services are available under TRICARE Prime that are not authorized under TRICARE Standard:

(1) ''Periodic health promotion and disease prevention exams;

(2) Appropriate education and counseling services. The exact services offered shall be established under uniform standards established by the

Assistant Secretary of Defense (Health Affairs).

(3) In addition to preventive care services provided pursuant to paragraph (b)(2) of this section, other benefit enhancements may be added and other benefit restrictions may be waived or relaxed in connection with health care services provided to include the Uniform HMO Benefit. Any such other enhancements or changes must be approved by the Assistant Secretary of Defense (Health Affairs) based on uniform standards.''

Also, under TRICARE Standard, education and counseling services are expressly excluded under 32 CFR 199.4(g)(39).

**D. National Defense Authorization Act (NDAA) 2007 Disease Management Directives**

The NDAA 2007 section 734 requires the design and development of a fully integrated program on disease and chronic care management for the military health care system that provides uniform policies and practices on disease and chronic care management throughout the TRICARE network by October 1, 2007. The NDAA 2007 further states the program ''shall include strategies for disease and chronic care management for all beneficiaries, including beneficiaries eligible for benefits under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*), for whom the TRICARE program is not the primary payer for health care benefits.''

The purposes of the MHS DM programs, as stated in the NDAA 2007, are to facilitate the improvement of the health status of individuals under care in the military health care system, to ensure the availability of effective health care services for individuals with diseases and other chronic conditions, and to ensure the proper allocation of health care resources for individuals who need care for disease or other chronic conditions. The NDAA 2007 mandates the DM program to address, at a minimum, the following chronic diseases and conditions: Diabetes, cancer, heart disease, asthma, chronic obstructive pulmonary disorder, and depression and anxiety disorders.

**E. Description of Demonstration Project**

Under this demonstration, DoD will waive, for disease management services provided to TRICARE Standard beneficiaries, the provisions of 10 U.S.C. 1079(a)(13) and 32 CFR 199.4(g)(39) that expressly exclude clinical preventive services for TRICARE Standard beneficiaries in the current benefit. The MHS will enroll TRICARE Standard beneficiaries in its DM programs. DM services provided to Standard beneficiaries will include, but are not limited to: Clinical preventive examinations, patient education and counseling services, and periodic screening exams.

There will be a cap on MHS DM program costs not to exceed the amount approved by the contracting officer. The DM program costs are total costs of DM services provided to both Prime and Standard beneficiaries. Only those beneficiaries identified by TRICARE Management Activity (TMA) for disease management of asthma, congestive heart failure, and diabetes are included in the current program, with other diseases or conditions to be added in the future as funding permits. The beneficiaries identified by TMA are included in the DM program unless the beneficiary chooses to opt out.

This action will directly reduce variation across the system and result in improved consistency and quality for beneficiaries with targeted chronic illness, regardless of TRICARE classification. Furthermore, including TRICARE Standard beneficiaries in current DM efforts will inform the MHS about total potential savings and return on investment (ROI) associated with DM, a stated requirement for inclusion in the Congressional report per the NDAA 2007. The system-wide DM program will improve the quality of care by educating patients about their disease and helping them manage their symptoms, thereby avoiding many complications and possibly slowing the progression of their chronic disease, thus resulting in significant cost savings.

**F. Implementation**

The demonstration is effective on April 1, 2007.

**G. Evaluation**

An independent evaluation of the demonstration will be conducted. The evaluation will be designed to use a combination of administrative and survey measures of health care outcomes (clinical, utilization, financial, and humanistic measures) to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of providing uniform disease management policies and practices across the MHS.

Dated: June 7, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E7–11381 Filed 6–12–07; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the President's Commission on Care for America's Returning Wounded Warriors

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Meeting of the President's Commission on Care for America's Returning Wounded Warriors on 29 June 2007. The purpose of the Commission meeting is to conduct briefings for the Commissioners. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Commission must notify the point of contact listed below no later than 5 p.m. 26 June 2007. Oral presentations by members of the public will be permitted only on 29 June from 2–2:30 p.m. before the full Committee. Presentations will be limited to 5 minutes. The Executive Director and the Designated Federal Official will select individuals for oral presentations and notify them in advance of the opportunity to make a 5 minute presentation to the Commission. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 26 June 2007, 5 p.m. and one copy of any material that is intended for distribution at the meeting. The Staff Points of Contact are Col. Denise Dailey, Major Teresa Barnes or Leslie Smith, toll free (877) 588–2035 or fax statements (703) 588–2046.

**DATES:** Friday, 29 June 2007.

*Location:* Main Conference Center, National Transportation Safety Board, 429 L'Enfant Plaza, SW., Washington, DC 20594.

*For Further Information on Submitting Statements Contact:* Col. Denise Dailey, Major Teresa Barnes or Leslie Smith, toll free (877) 588–2035 or fax statements (703) 588–2046.

**SUPPLEMENTARY INFORMATION:** Meeting agenda.

**29 June 2007**

9 a.m. Administrative Time Not Open to the Public.

10 a.m. Public Session.
Presentations:
Legislative Initiatives.
Summary of Public Input.
12–2 p.m. Lunch/Administrative Time.
2–2:30 p.m. Public Forum Presentations.
2:30–4:30 p.m. Discussion Panels on Commission Findings.
5 p.m. Wrap Up.

**Note:** Exact order may vary.
Dated: June 7, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 07–2916 Filed 6–12–07; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

**[DOD–2007–OS–0064]**

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** the Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on July 13, 2007 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 676–6045.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 6, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals'' dated December 12, 2000, 65 FR 239.

Dated: June 6, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7205**

**SYSTEM NAME:**

General Accounting and Finance System, Report Database for Financial Statements.

**SYSTEM LOCATION:**

Defense Information Systems Agency, Defense Enterprise Computing Center, 7879 Wardleigh Road, Hill Air Force Base, Ogden, UT 84056–5997.

**CATEGORIES FOR INDIVIDUALS COVERED BY THE SYSTEM:**

United States Air Force (active duty, reserve, and guard members), Department of Defense civilian employees for the Defense Security Service, and the National Geospatial-Intelligence Agency.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Social Security Number (SSN) and General and Working Capital Funds transactions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; DoD Directive 5118.5, Defense Finance and Accounting Service; 31 U.S.C. Sec. 3512 and 3513; and E.O. 9397 (SSN).

**PURPOSE(S):**

The system will enable the United States Air Force, Defense Security Service, and the National Geospatial-Intelligence Agency (NGA) to produce transaction-driven financial statements in support of Defense Finance and Accounting Service financial mission.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the United States Department of the Treasury to report the financial status of the General and Working Capital funds.

To the General Accounting Office for audit purposes.

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Social Security Number (SSN) and transaction number.

**SAFEGUARDS:**

Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and user identifications are used to control access to the system data, and procedures are in place to deter browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

**RETENTION AND DISPOSAL:**

Records are cut off at the end of the fiscal year, and destroyed in 6 years and 3 months after cutoff.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Finance and Accounting Service—Denver, System Management Directorate, System Manager, Accounting and Cash Systems, 6760 E. Irvington Place, Denver, CO 80279–8000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's name, Social Security Number (SSN), current address, and telephone number and provide a reasonable description of the records.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's name, Social Security Number (SSN), current address, and telephone number.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

**RECORD SOURCE CATEGORIES:**

From individuals, DoD Components, such as, the United States Air Force, Defense Security Service, and National Geospatial-Intelligence Agency.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 07–2922 Filed 6–12–07; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning a Spreader Bar Apparatus

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 7,222,903 B2 entitled ''Spreader Bar Apparatus'' issued May 29, 2007. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–4184 or e-mail: *Jeffrey.Ditullio@natick.army.mil*.

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 07–2924 Filed 6–12–07; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Mandatory Provision of Increased Firearms Security by Department of Defense Personal Property Storage Transportation Service Providers (TSP's)/Contractors

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice.

**SUMMARY:** The Military Surface Deployment and Distribution Command (SDDC), as the Program Manager for Department of Defense (DOD) Personal Property Non-Temporary Storage Program, is informing the NTS Transportation Service Provider (TSP)/contractor community of the mandatory requirement for increased Firearms Security in the DOD Personal Property Non-Temporary Storage Program. All shipments awarded or already in storage prior to the effective date of the contract modification would not be affected by this notice. Changes to Appendix J Tender of Service (TOS) Personal Property Non-Temporary Storage Section C are denoted by *italics*.

**DATES:** *Effective Date:* October 1, 2007.

**ADDRESSES:** Requests for additional information may be sent by e-mail to *Northeastrsmo@sddc.army.mil*; or by courier to Department of Army, HQ SDDC Northeast RSMO, ATTN: SDPP–PA–N, Military Surface Deployment and Building 1107, Ft. Monmouth, NJ 07703–5045.

**SUPPLEMENTARY INFORMATION:** Appendix J Tender of Service (TOS) Personal Property Non-Temporary Storage Section C—Technical Provisions. Currently Section C–2a–PRE MOVE SURVEY, of the NTS Tender of Service reads as follows:

(1) I agree to perform a pre-move survey on non-temporary storage lots estimated at 3,000 pounds or more, at origin points within a 50-mile radius of the warehouse facility designated for storage. I understand this requirement will apply to only those lots on which I am provided a minimum of 5 working days advance notice of the pickup date requirement.

(2) I agree that if a telephone number is provided five (5) days in advance of pickup, I will make a telephone contact pre-move survey for non-temporary storage lots of lesser weights than indicated above, or for lots with origin points exceeding 50 miles of the warehouse facility designated for storage.

The following paragraph (3) will be added to C–2a of the NTS Tender of Service—PRE MOVE SURVEY.

(3) *Whenever a pre-move survey is conducted and firearm(s) are to be stored, the TSP will inform the service member that the use of trigger locks will assist as a safety and security measure. The use of locks is not mandatory.*

Under paragraph C–3m FIREARMS in the NTS TOS, sub paragraphs (1) and (2) will be added to paragraph C–3m. Sub paragraphs (1) and (2) are listed respectively.

(1) *As a means of verifying that the firearm(s) were placed into storage in accordance with the TOS and DTR Part IV, a company official shall verify that the firearm(s) were received at a warehouse and placed into storage. The official shall submit written certification to the local ITO listing the firearm(s) by make, model, serial number, and caliber or gauge within 72 hours of shipment arriving at the warehouse indicating that the firearm(s) were received at the warehouse and placed into storage. A copy of this certification shall be placed in member's folder.*

(2) *Upon noticing a missing firearm(s), the NTS–TSP shall immediately notify the Regional Storage Management Office (RSMO) of the occurrence in accordance with C–7(d). NTS–TSPs may be placed in an ineligible status by the Regional Program Management Office for each incident.* If there are repeated occurrences of this nature, this may be cause for permanent disqualification from the NTS program.

*Costs:* Upon implementation of this change no additional cost will affect the NTS Transportation Service Provider (TSP).

**Regulation Flexibility Act**

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

**Paperwork Reduction Act**

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.,* does not apply because no information collection or recordkeeping requirements are imposed on contractors, offerors or members of the public.

**Steven L. Amato,**

*Col, USAF, DCS, Passenger and Personal Property.*

[FR Doc. 07–2923 Filed 6–12–07; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[IC07–547–001, FERC 547]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 6, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier **Federal Register** notice of March 7, 2007 (72 FR 10192–10193) and has made this notification in its submission to OMB. Copies of the submission were also submitted to the commenters.

**DATES:** Comments on the collection of information are due by July 13, 2007.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07–547–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC 547 ''Gas Pipeline Rates: Refund Report Requirements.''
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.* 1902–0084.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the sections 4, 5 and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Sections 4 and 5 authorize the Commission to order a refund, with interest, on any portion of a natural gas company's increased rate or charge that is found to be not just or reasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or provision under the company's tariff. Section 16 authorizes the Commission to prescribe the rules and regulations necessary to administer its refund mandates. The Commission's refund and reporting requirements are set forth 18 CFR 154.501 and 154.502.

The data collected allows the Commission to monitor the refunds owed by the natural gas companies and to ensure the passage of the refunds, with applicable interest, to the appropriate natural gas customers.

5. *Respondent Description:* The respondent universe currently comprises 60 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 4,500 total hours, 60 respondents (average), 1 response per respondent, and 75 hour per response (rounded off and average time)

7. *Estimated Cost Burden to respondents:* 4,500 hours/2080 hours per years × $122,137 per year = $264,238. The cost per respondent is equal to $4,404.

**Statutory Authority:** Statutory provisions of sections 4, 5 and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11363 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–160]**

### ANR Pipeline Company; Notice of Negotiated Rate Filing Amendment

June 5, 2007.

Take notice that on June 1, 2007, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to a negotiated rate agreement between ANR and Wisconsin Power & Light Company.

ANR requests that the Commission accept and approve the subject filing to be effective June 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention

or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11358 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–159]**

### ANR Pipeline Company; Notice of Negotiated Rate Filing

June 5, 2007.

Take notice that on June 1, 2007, ANR Pipeline Company (ANR) tendered for filing and approval a negotiated rate agreement between ANR and Wisconsin Power & Light Company. The service agreement is being filed as a negotiated rate because the parties have agreed to fixed rates for the term of the contract.

ANR requests that the Commission accept and approve the subject filing to be effective June 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11360 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EF07–2021–000]**

### U.S. Department of Energy; Bonneville Power Administration; Notice of Filing

June 6, 2007.

Take notice that on May 22, 2007, U.S. Department of Energy, Bonneville Power Administration (Bonneville), tendered for filing proposed rate adjustments for its 2008 Transmission and Ancillary Services Rates pursuant to sections 7(a)(2) and 7(i)(6) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6). Pursuant to Commission regulations sections 300.10 and 300.21 (18 CFR 300.10 and 300.21), Bonneville seeks interim approval of the proposed transmission and ancillary services effective October 1, 2007, followed by final confirmation and approval. Bonneville also seeks a finding by the Commission that the proposed rates satisfy the Commission's comparability standards applicable to non-public utilities pursuant to the reciprocity conditions of Order No. 888, FERC Stats. & Regs. ¶ 31,760 *et seq.*

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 21, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11361 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–475–000]**

### CenterPoint Energy Gas Transmission Company; Notice of Tariff Filing

June 5, 2007.

Take notice that on June 1, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 455, to be effective July 1, 2007.

CEGT states that the purpose of this filing is to revise Section 12.3 of the General Terms and Conditions of the CEGT Tariff to change the due date for filing negotiated rate agreements with the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11359 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–472–000]**

### Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2007.

Take notice that on May 31, 2007, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, Forty-Sixth Revised Sheet No. 11A, to become effective July 1, 2007.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11348 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–595–005]**

### Discovery Gas Transmission LLC; Notice of Negotiated Rate Filing

June 6, 2007.

Take notice that on May 16, 2007, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 22.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11362 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–595–006]**

### Discovery Gas Transmission LLC; Notice of Negotiated Rate Filing

June 6, 2007.

Take notice that on May 18, 2007, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Sixth Revised Sheet No. 22.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11365 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP05–422–021; RP06–226–004]**

### El Paso Natural Gas Company; Notice of Compliance Filing

June 5, 2007.

Take notice that on June 1, 2007, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets to become effective July 1, 2007:

Twelfth Revised Sheet No. 202A
First Revised Sheet No. 362A
First Revised Sheet No. 362B
First Revised Sheet No. 362C
First Revised Sheet No. 362E
First Revised Sheet No. 362F
First Revised Sheet No. 362G
First Revised Sheet No. 362H
First Revised Sheet No. 362I
First Revised Sheet No. 362J

EPNG states that the filing is being made in compliance with the Monthly Imbalance Stipulation and Agreement approved by the Commission in the above-referenced proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11350 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–518–102]**

### Gas Transmission Northwest Corporation; Notice of Negotiated Rate Filing

June 5, 2007.

Take notice that on May 31, 2007, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets to update GTN's reporting of negotiated rate transactions that it has entered into, to become effective June 1, 2007:

Forty-Third Revised Sheet No. 15
Second Revised Sheet No. 20

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or

before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11357 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–81–033]**

### Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

June 5, 2007.

Take notice that on May 31, 2007 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheets, to be effective June 1, 2007:

Ninth Revised Sheet No. 4G.01
Fifth Revised Sheet No. 4K

KMIGT states that the tariff sheets are being filed in compliance with the Commission's December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11353 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–513–041]**

### Questar Pipeline Company; Notice of Negotiated Rates Filing

June 5, 2007.

Take notice that on May 31, 2007, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Forty-First Revised Sheet No. 7, Original Sheet No. 7.01 and Thirteenth Revised Sheet No. 7A, to be effective May 1, 2007.

Questar states the filing is being filed to update its tariff by revising the Statement of Negotiated Rates. Questar states that the update reflects three new negotiated-rate contracts and associated footnote.

Questar states that its negotiated-rate contract provisions were authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.*

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11356 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–200–026]**

### Rockies Express Pipeline LLC; Notice of Compliance Filing

June 5, 2007.

Take notice that on May 31, 2007, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective June 1, 2007:

Twenty-First Revised Sheet No. 22
Tenth Revised Sheet No. 24

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11349 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–426–029]**

### Texas Gas Transmission, LLC; Notice of Negotiated Rate Filing

June 5, 2007.

Take notice that on June 1, 2007, Texas Gas Transmission, LLC, (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2007:

First Revised Sheet No. 54
Original Sheet No. 54A

Texas Gas states that the purpose of this filing is to submit to the Commission tariff sheets detailing a Negotiated Rate Agreement between Texas Gas and Entergy Louisiana, LLC dated May 9, 2007, to be effective June 1, 2007, through October 31, 2007, under a Summer No-Notice Transportation (SNS) service agreement.

This Negotiated Rate Agreement is being submitted in compliance with ''Section 38. Negotiated Rates'' of the General Terms and Conditions of Texas Gas' tariff and the Commission's modified policy on negotiated rates [104 FERC ¶ 61,134 (2003)].

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11354 Filed 6–12–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–426–030]**

### Texas Gas Transmission, LLC; Notice of Negotiated Rate Filing

June 5, 2007.

Take notice that on June 1, 2007, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2007:

Third Revised Sheet No. 51
Original Sheet No. 51A
Tenth Revised Sheet No. 56

Texas Gas states that the purpose of this filing is to submit to the Commission tariff sheets detailing a Negotiated Rate Agreement between Texas Gas and Aquila, Inc. dated May 23, 2007, to be effective June 1, 2007, through October 31, 2007, under a Summer No-Notice Transportation (SNS) service agreement.

This Negotiated Rate Agreement is being submitted in compliance with ''Section 38. Negotiated Rates'' of the General Terms and Conditions of Texas Gas tariff and the Commission's modified policy on negotiated rates [104 FERC ¶ 61,134 (2003)].

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11355 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP07–385–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

June 5, 2007.

Take notice that on May 21, 2007, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP07–385–000, an application pursuant to sections 157.205, 157.208, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate a new receipt point to receive revaporized liquefied natural gas in Cameron Parish, Louisiana, under Transco's blanket certificate issued in Docket No. CP82–426–000, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Transco proposes to construct and operate a new receipt point on Transco's 30-inch diameter Southwest Louisiana (SWLA) lateral to receive revaporized natural gas from the Sabine Pass LNG, L.P. import terminal by way of the Cheniere Sabine Pass Pipeline Company's (Cheniere) pipeline. The tap on Transco's SWLA lateral would be located within the yard of Transco's existing Compressor Station No. 44 in Cameron Meadows, Cameron Parish, Louisiana. Transco states that the interconnection with Cheniere would be located adjacent to Compressor Station No. 44. Transco also states that the new receipt point would provide Transco with the ability to receive up to 1 Bcf of revaporized LNG per day from the Cheniere Sabine Pass pipeline into Transco's SWLA lateral. Transco estimates that it would cost $1,600,000 to construct the proposed receipt point facilities. Transco further states that Cheniere would reimburse Transco for all costs associated with construction of the proposed facilities.

Any questions concerning this application may be directed to Bill Hammons, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, or telephone 713–215–2130.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11352 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–249–003]**

### Viking Gas Transmission Company; Notice of Negotiated Rate Filing

June 5, 2007.

Take notice that on May 31, 2007, Viking Gas Transmission Company (Viking) filed with the Commission a negotiated rate agreement between Viking and BP Canada Energy Marketing Corp.

Viking states that it has entered into the agreement under which it would provide firm transportation service to this shipper under Rate Schedule FT–A commencing on June 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11347 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–473–000]**

### National Energy & Trade, LP, Complainant v. Texas Gas Transmission, LLC, Gulf South Pipeline Company, LP, Respondents; Notice of Complaint Requesting Fast Track Processing

June 5, 2007.

Take notice that on June 4, 2007, National Energy & Trade, LP (Complainant), pursuant to section 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206, filed a complaint against Texas Gas Transmission, LLC (Texas Gas) and Gulf South Pipeline, LP (Gulf South) alleging that, Texas Gas failed to follow its FERC Gas Tariff and Commission policy in awarding capacity to its affiliate, Gulf South, and Sequent Energy Management, LP (Sequent); Texas Gas violated the Natural Gas Act in awarding capacity to Gulf South in an unduly discriminatory and preferential manner, and Texas Gas and Gulf South engaged in market manipulation in violation of the Energy Policy Act of 2005.

The Complainant states that a copy of the complaint has been served on Texas Gas and Gulf South.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time June 25, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11346 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 3309–019]**

### Arthur E. Cohen, Marlow Hydro, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

June 5, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 3309–019.

c. *Date Filed:* April 30, 2007.

d. *Applicants:* Arthur E. Cohen (Transferor) and Marlow hydro, LLC (Transferee).

e. *Name and Location of Project:* The Nash Mill Dam Project is located on the Ashuelot River, in Cheshire County, New Hampshire.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Transferor and Transferee: Howard M. Moffett, Orr & Reno, P.A., One Eagle Square, P.O. Box 3550, Concord, NH 03302–3550, (603) 224–2381.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* July 6, 2007.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–3309–019) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under Section 8 of the Federal Power Act, of a transfer of license for the Nash Mill Dam Project No. 3309 from Arthur E. Cohen to Marlow Hydro, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the project number excluding the last three digits (P–3309) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments

filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11351 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM07–9–000]**

### Notice of Inquiry on Adequacy of FERC Financial Forms; Notice of Workshop

June 6, 2007.

The staff of the Federal Energy Regulatory Commission (Commission) will hold an informal workshop in the above-referenced proceeding on July 18, 2007, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in meeting room 3M–2A&B from 9:30 a.m. until 12:30 p.m. Eastern Time.

The purpose of this staff workshop is to address the need for changes or revisions to the Commission's reporting requirements in the FERC Form 6. By addressing these issues, the Commission staff is providing an informal forum for market participants and stakeholders in the oil industry to explore ways to improve the quality and usefulness of information contained in this form. During the staff workshop, the following questions will be addressed:

How do you use the FERC Form 6?

What information from the FERC Form 6 is most helpful to you?

What additional information should be included in the FERC Form 6?

How would including additional information be helpful to you?

What changes, if any, to the FERC Form 6 do you believe are necessary?

How burdensome would any suggested changes be to filers of the FERC Form 6?

The workshop will be held in room 3M–2A&B, which accommodates about 90 people. All interested persons are invited, and there is no registration fee to attend. Seating will be on a first-come, first-served basis.

This workshop will be neither webcasted nor transcribed.

Questions about the conference should be directed to Samuel Berrios by e-mail at *samuel.berrios@ferc.gov* or by phone at (202) 502–6212.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–11364 Filed 6–12–07; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2007–0298; FRL–8132–5]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Pesticide Applicators; EPA ICR No. 0155.09, OMB Control No. 2070–0029

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Certification of Pesticide Applicators'' and identified by EPA ICR No. 0155.09 and OMB Control No. 2070–0029, is scheduled to expire on December 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

**DATES:** Comments must be received on or before August 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0298, 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2007–0298. 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 Federal 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 web site 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Joseph Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9072; fax number: (703) 305–5884; e-mail address: *hogue.joe@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## III. What Information Collection Activity or ICR Does this Action Apply to?

*Affected entities*: Entities potentially affected by this action are:

- Applicators on farms:

Crop production (North American Industrial Classification System (NAICS) code 111).

Animal production (NAICS code 112).

- Commercial services applicators:

Exterminating and pest control services (NAICS code 561710).

- Administration of certification programs by states/tribal lead agencies:

Environmental protection program administration (NAICS code 924110).

Pest control programs, agricultural, governmental (NAICS code 926140).

- Pesticide dealers (only for EPA-administered programs):

Retail nursery, lawn, and garden supply stores (NAICS code 444220).

Agricultural chemicals merchant wholesalers (NAICS code 424910).

*Title*: Certification of Pesticide Applicators.

*ICR numbers*: EPA ICR No. 0155.09, OMB Control No. 2070–0029.

*ICR status*: This ICR is currently scheduled to expire on December 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract*: This ICR is designed to provide EPA with the information necessary to oversee training and certification programs for applicators of restricted use pesticides. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) allows the EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. Restricted use pesticides, because of their potential to harm human health or the environment, may be applied only by a certified applicator or by a person under the direct supervision of a certified applicator. A person must meet certain standards of competency to become a certified applicator. States can be delegated the certified applicator program, but it must be approved by the Agency before it can be implemented. In non-participating entities, EPA administers the certification program.

Annual reports from the states are used as a monitoring tool to develop overall data on pesticide activities for OMB, Congress, and others; to distribute EPA grant funds to participating states, to target enforcement activities, and to revise certification and training program emphasis and requirements. An application form is used to obtain vital information from persons applying for certification, such as name and address, and to schedule applicators for certification or re-certification. Dealer records are necessary to ensure that access to restricted use pesticides is limited to certified applicators. A record of each application of a restricted use pesticide is required for certified commercial applicators. These records are monitored to assure that restricted-use pesticides are used only by, or under the supervision of, certified applicators and to ensure that pesticide labeling requirements are adhered to by requiring applicators to record details of the restricted-use product application. Without these records it would often be difficult to successfully enforce against misuse. Responses to this ICR are mandatory. The authority for this information collection activity is

provided under sections 3(d) and 11 of FIFRA and 40 CFR part 171.

*Burden statement*: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.17 hours per response for application for certification in the Navajo Indian country, 77.4 hours per response for each state to submit annual reports, and 3.1 hours per response for commercial applicators' recordkeeping of restricted use pesticide applications. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents*: 421,097.

*Frequency of response*: On occasion or annually, depending on the category of respondent.

*Estimated total average number of responses for each respondent*: 1–3.

*Estimated total annual burden hours*: 1,309,623 hours.

*Estimated total annual costs*: $39,694,611. This is an estimated burden cost of $39,694,611 with no additional cost for capital investment or maintenance and operational costs.

## IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 1,745 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is due to Colorado assuming responsibility for the private applicator program, and the dealer recordkeeping program in that state. The previous ICR included the burden of those programs in Colorado, as EPA still administered them at that time. This change is the result of a program change.

## V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 30, 2007.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E7–11292 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2007–0271; FRL–8129–6]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Lead-Based Paint Pre-Renovation Information Dissemination Toxic Substances Control Act Section 406(b); EPA ICR No. 1669.05, OMB Control No. 2070–0158

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Lead-Based Paint Pre-Renovation Information Dissemination Toxic Substances Control Act (TSCA) Section 406(b)'' and identified by EPA ICR No. 1669.05 and OMB Control No. 2070–0158, is scheduled to expire on February 29, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

**DATES:** Comments must be received on or before August 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0271, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0271. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0271. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the 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 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 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 web site 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

*For technical information contact*: John Wilkins, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0477; fax number: (202) 566–0471; e-mail address: *wilkins.john@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## III. What Information Collection Activity or ICR Does this Action Apply to?

*Affected entities*: Entities potentially affected by this action are persons who perform renovations of certain types of housing, constructed prior to 1978, for compensation.

*Title*: Lead-Based Paint Pre-Renovation Information Dissemination TSCA Section 406(b).

*ICR numbers*: EPA ICR No. 1669.05, OMB Control No. 2070–0158.

*ICR status*: This ICR is currently scheduled to expire on February 29, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract*: This information collection involves third-party notification to owners and occupants of housing that will allow these individuals to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) of TSCA requires EPA to promulgate regulations requiring certain persons who perform renovations of target housing for compensation to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Those who fail to provide the pamphlet as required may be subject to both civil and criminal sanctions.

Responses to the collection of information are mandatory (see 40 CFR part 745, subpart E). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden statement*: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 1.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents*: 2,625,500.

*Frequency of response*: On occasion.

*Estimated total average number of responses for each respondent*: 1.

*Estimated total annual burden hours*: 3,122,486 hours.

*Estimated total annual costs*: $98,568,324. This includes an estimated burden cost of $89,139,475 and an estimated cost of $9,428,849 for capital investment or maintenance and operational costs.

## IV. Are There Changes in the Estimates from the Last Approval?

There is a net decrease of 339,056 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease primarily reflects EPA's revised estimates of the number of renovation events in rental housing units. This change is an adjustment.

## V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 30, 2007.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E7–11293 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2007–0273; FRL–8129–5]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Polychlorinated Biphenyls, Consolidated Reporting and Recordkeeping Requirements; EPA ICR No. 1446.09, OMB Control No. 2070–0112

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Polychlorinated Biphenyls (PCBs), Consolidated Reporting and Recordkeeping Requirements'' and identified by EPA ICR No. 1446.09 and OMB Control No. 2070–0112, is scheduled to expire on February 29, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

**DATES:** Comments must be received on or before August 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0273, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0273. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0273. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the 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 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 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 web site 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm.

3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

*For technical information contact*: Peter Gimlin, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; fax number: (202) 566–0473; e-mail address: *gimlin.peter@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## III. What Information Collection Activity or ICR Does this Action Apply to?

*Affected entities*: Entities potentially affected by this action are persons who currently possess PCB items, PCB-contaminated equipment, or other PCB waste.

*Title*: PCBs, Consolidated Reporting and Recordkeeping Requirements.

*ICR numbers*: EPA ICR No. 1446.09, OMB Control No. 2070–0112.

*ICR status*: This ICR is currently scheduled to expire on February 29, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract*: Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) of TSCA bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) of TSCA establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden statement*: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 1.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

*Estimated total number of potential respondents*: 576,811.

*Frequency of response*: On occasion.

*Estimated total average number of responses for each respondent*: 1.

*Estimated total annual burden hours*: 696,055 hours.

*Estimated total annual costs*: $21,034,240. This includes an estimated burden cost of $21,021,640 and an estimated cost of $12,600 for capital investment or maintenance and operational costs.

## IV. Are There Changes in the Estimates from the Last Approval?

There is a net decrease of 128,723 hours (from 824,778 hours to 696,055 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease primarily reflects EPA's revised estimates in the total number of respondents. This change is an adjustment.

## V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 30, 2007.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E7–11415 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[R08–CO–2007–0002; FRL–8326–9]**

## Adequacy Determination for the Denver and Longmont, CO, Carbon Monoxide and Denver $PM_{10}$ Maintenance Plans' Motor Vehicle Emissions Budgets for Transportation Conformity Purposes; State of Colorado

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

**ACTION:** Notice of adequacy.

**SUMMARY:** With a letter signed September 25, 2006, the State of Colorado submitted revised maintenance plans for carbon monoxide for Denver and Longmont, Colorado, and a revised maintenance plan for $PM_{10}$ for Denver, Colorado (the ''maintenance plans''). In this document, EPA is notifying the public that we have found adequate for transportation conformity purposes the following motor vehicle emissions budgets from the maintenance plans: The 2021 carbon monoxide motor vehicle emissions budget from the Denver carbon monoxide maintenance plan, the 2020 carbon monoxide motor vehicle emissions budget from the Longmont carbon monoxide maintenance plan, and the 2022 $PM_{10}$ and $NO_X$ motor vehicle emissions budgets from the Denver $PM_{10}$ maintenance plan. 40 CFR 93.118(e)(2) requires that EPA declare an implementation plan submission's motor vehicle emissions budgets adequate for conformity purposes prior to the budgets being used to satisfy the conformity requirements of 40 CFR part 93. As a result of our finding, the Denver Regional Council of Governments as the Metropolitan Planning Organization, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets identified above for future transportation conformity determinations.

**DATES:** This finding is effective June 28, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Kimes, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 1595 Wynkoop, Denver, Colorado 80202, (303) 312–6445, *kimes.jeffrey@epa.gov*.

The letters documenting our finding are available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/reg8sips.htm*.

**SUPPLEMENTARY INFORMATION:** Throughout this document we, us, or our, are used to mean EPA.

This action is simply an announcement of a finding that we have already made. We sent letters to the State of Colorado, Department of Public Health and Environment on May 3, 2007, stating that the 2021, 2020, and 2022 motor vehicle emissions budgets (MVEB) in the submitted Denver and Longmont carbon monoxide maintenance plans and the Denver $PM_{10}$ maintenance plan are adequate. These findings will also be announced on our conformity Web site at *http://www.epa.gov/otaq/stateresources/transconf/reg8sips.htm*.

Transportation conformity is required by section 176(c) of the Clean Air Act. The conformity rules at 40 CFR part 93 require that transportation plans, programs, and projects conform to SIPs and establish the criteria and procedures for determining whether or not they demonstrate conformity. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

The process for determining the adequacy of a transportation conformity budget is described at 40 CFR 93.118(f).

The 2021, 2020, and 2022 MVEBs from the Denver and Longmont, Colorado carbon monoxide and $PM_{10}$ maintenance plans are as follows:

CARBON MONOXIDE

| Year | Maintenance area | Pollutant | Emission budget (tons per day) |
|---|---|---|---|
| 2021 | Denver | Carbon Monoxide | 1600 |
| 2020 | Longmont | Carbon Monoxide | 43 |

$PM_{10}$

| Year | Maintenance area | Pollutant | Emission budget (tons per day) |
|---|---|---|---|
| 2022 | Denver | $PM_{10}$ | 55 |
| 2022 | Denver | Nitrogen Oxides ($NO_X$) | 56 |

40 CFR 93.118(e)(1) requires that upon a finding of adequacy these budgets must be used in transportation conformity determinations unless the maintenance plan is later disapproved by EPA.

We note that the submitted Denver, Colorado, carbon monoxide maintenance plan proposes revisions to the previously approved 2013 carbon monoxide MVEB for Denver. The submitted Longmont, Colorado, carbon monoxide maintenance plan proposes changes to the previously approved 2010 and 2015 carbon monoxide MVEBs for Longmont. The submitted Denver, Colorado, $PM_{10}$ maintenance plan proposes changes to the previously approved 2015 $PM_{10}$ and $NO_X$ MVEBs for Denver. However, 40 CFR 93.118 (e)(1) does not allow budgets in submitted plans to supersede MVEBs in approved implementation plans for the same Clean Air Act requirement and the same years addressed by a previously approved implementation plan unless EPA specifies otherwise in its approval of a SIP, a circumstance that does not apply here. Thus, this adequacy finding does not make any changes to these previously approved budgets. These budgets will be addressed in EPA's action regarding the approval or disapproval of the maintenance plans.

The submitted Denver $PM_{10}$ maintenance plan includes a budget trading protocol for calculating the $PM_{10}$ and $NO_X$ budgets for each conformity determination. That protocol will be addressed in EPA's action to approve or disapprove the maintenance plan; this adequacy finding has no bearing on that action and does not authorize the use of the budget trading protocol.

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

Dated: June 1, 2007.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

[FR Doc. E7–11413 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2007–0474; FRL–8135–9]**

## Methods for Testing Efficacy of Skin-Applied Repellents; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** EPA's Biopesticides and Pollution Prevention Division in cooperation with the Registration Division and the Field and External Affairs Division will host a public workshop on June 19, 2007. The purpose of the workshop is to share technical information on updates and latest developments in repellents efficacy testing, and alternatives to human subjects testing for efficacy of skin-applied repellents. Experts in product performance testing from other agencies of the Federal government, Department of Defense, United States Department of Agriculture, Centers for Disease Control, and private laboratories have been invited and are expected to attend. The invitation is also extended to the general public. Proceedings from this meeting will inform EPA for completing OPPTS Harmonized Guideline 810.3700. The revised OPPTS Harmonized 810.3700 testing guideline, *Product Performance of Skin-Applied Repellents of Insect and other Arthropods*, has already been through the Science Advisory Panel and the Human Studies Review Board review in recent years. The guideline provides guidance for adequate testing of performance of skin-applied repellents on insects and other arthropods of human health significance.

**DATES:** The meeting will be held on June 19, 2007, from 9 a.m. to 3 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, as soon as possible to give EPA time to process your request.

**ADDRESSES:** The meeting will be held in Room 4830 (4th Floor) of One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Clara Fuentes, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0171; fax number: (703) 308–7026; e-mail address: *Fuentes.Clara@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 be of particular interest to anyone who may be affected by the revised OPPTS Harmonized 810.3700 testing guideline, *Product Performance of Skin-Applied Repellents of Insect and other Arthropods*. You may be potentially affected by this action if you are involved in product performance testing for a Federal government agency or are a private laboratory which conducts product performance testing, repellent efficacy testing and/or human subjects testing. Potentially affected entities may include, but are not limited to:

- Testing Laboratories (NAICS code 541380), e.g., product testing laboratories or services, testing laboratories (except medical, veterinary), biological (except medical, veterinary) testing laboratories or services.
- Research and Development in Physical, Engineering, and Life Sciences (NAICS code 541710), e.g., agriculture research and development laboratories or services, biology research and development laboratories or services, environmental research and development laboratories or services,

health research and development laboratories or services.

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 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–2007–0474. 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 Building), 2777 S. Crystal Drive, 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. Tentative Agenda

1. Presentation of lab repellent studies.

2. Novel repellents, essays, and chemical models.

3. Use of *in vitro* systems.

4. Field testing of mosquito repellents.

5. Data analysis and evaluation.

## List of Subjects

Environmental protection, Human subjects, Product performance testing, Repellent efficacy.

Dated: June 11, 2007.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 07–2937 Filed 6–11–07; 12:01 pm]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2004–0262; FRL–8078–9]**

## Federal Plan for Certification of Restricted Use Pesticide Applicators in Navajo Indian Country; Notice of Implementation; and Announcement of Availability of Form to Request Pesticide Applicator Certification in Navajo Indian Country

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

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of February 3, 2006, EPA issued the notice of intent to implement a federal program to certify applicators of restricted use pesticides (RUPs) in Navajo Indian Country. The program will be implemented by EPA Region 9, located in San Francisco, CA. In the notice, EPA solicited comments from the public on EPA's intent to implement a federal certification plan in Navajo Indian Country and on its proposed Federal Plan for Certification of Restricted Use Pesticides in Navajo Indian Country (federal plan). No comments were received and EPA hereby implements the federal plan. Applicators who currently purchase and/or apply RUPs in Navajo Indian Country will have until October 11, 2007 to become certified by EPA. After that date, applicators of RUPs must hold the appropriate EPA certification to purchase and/or apply in Navajo Indian Country. Failure to hold the appropriate certification after October 11, 2007 may result in federal enforcement action in accordance with section 12(a)(2)(F) of FIFRA. This notice also serves to announce the form (EPA Form 8500–17–N) EPA will use for pesticide applicators seeking certification in Navajo Indian Country. Pesticide applicators seeking certification to use RUPs in Navajo Indian Country must complete this form and submit it to EPA Region 9 at the location listed under **ADDRESSES**.

**ADDRESSES:** Persons should submit EPA Form 8500–17–N to: Pesticide Applicator Certification Program, Environmental Protection Agency, Region 9, 75 Hawthorne St., (CED-5), San Francisco, CA 94105–3901.

EPA Form 8500–17–N is available from the sources identified under Unit I. It may also be printed from EPA's website at *http://www.epa.gov/oppfead1/safety/applicators/applicators.htm*.

**FOR FURTHER INFORMATION CONTACT:** Fabiola Estrada, Environmental Protection Agency, Region 9, 75 Hawthorne St., (CED-5), San Francisco, CA 94105–3901; telephone number: (415) 972–3493; e-mail address: *Estrada.fabiola@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

The final federal plan, related documents, and the application form (EPA Form 8500–17–N) are available:

1. *By mail*: Fabiola Estrada, Environmental Protection Agency, Region 9, 75 Hawthorne St., (CED-5), San Francisco, CA 94105–3901; telephone number: (415) 947–4212; e-mail address: *Estrada.fabiola@epa.gov*.

2. *In person*: Copies of these documents may be examined at the following locations from 9 a.m. to noon and 1 p.m. to 4 p.m., Monday through Thursday, excluding legal holidays.

i. United States Environmental Protection Agency, Region 9 Library, 75 Hawthorne St., (CED-5), San Francisco, CA 94105–3901; telephone number: (415) 947–4406; e-mail address: *library-region9@epa.gov*.

ii. Navajo Nation Environmental Protection Agency, Pesticide Program, Window Rock Blvd., Building # F004–103 (ATD), Window Rock, AZ 86515. Contact: Glenna Lee, telephone number: (928) 871–7815, e-mail: *glennalee@yahoo.com.*

## II. Does this Action Apply to Me?

This notice applies to individuals and businesses who are seeking certification to apply RUPs as defined by EPA in Navajo Indian Country. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides. 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

## III. What Action is the Agency Taking?

EPA is implementing the Federal Plan for Certification of Restricted Use Pesticide Applicators in Navajo Indian Country. There were no public comments submitted regarding the **Federal Register** notice of February 3, 2006 (70 FR 5838) (FRL–7682–4).

## List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Certification, Pesticides and pests.

Dated: June 4, 2007.

**James B. Gulliford,**

*Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances.*

[FR Doc. E7–11322 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2007–0414; FRL–8136–2]**

## 2-Octyl-3 (2H)-isothiazolone (Octhilinone) Risk Assessment; Notice of Availability and Risk Reduction Options

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessments, and related documents for the pesticide 2-octyl-3 (2H)-isothiazolone (also known as octhilinone), and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for octhilinone through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before July 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0414, 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–2007–0414. 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 Federal 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 web site 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:** K. Avivah Jakob, Antimicrobials Division (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8481; e-mail address: *jakob.kathryn@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. 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?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessment(s) and related documents for octhilinone, and soliciting public comment on risk management ideas or proposals. Octhilinone is currently registered as an active ingredient and is used as an industrial mildewcide, microbiocide, fungicide and bacteriocide. EPA developed the risk assessment and risk characterization for octhilinone through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The primary use sites for octhilinone are as a materials preservative, as an industrial mildewcide for cooling tower and air washer water systems, and as a wood preservative. Some examples of materials that can contain octhilinone include fabrics and textiles (e.g., furniture, auto-upholstery, footwear, carpet, carpet- backing, tents, awnings, canvas, linens, wall and window coverings, dust towels, bedding, mattresses, pet bedding, poll liners, automotive trim, roof liners, marine upholstery, pond liners, synthetic brooms, mops, air filter media); coatings (e.g., walls, paints, plasters, stuccos); sealants (e.g., grouts, caulks, joint cements); adhesives (e.g., wallpaper pastes, gelatin and starch based); rubber and plastics (e.g., latex, acrylic, styrene, butadiene, polyvinyl chloride, polymethane, vinyl, foams); leather preservation (e.g., wet processes). Octhilinone is also used for metalworking fluid preservation, hydraulic fluid preservation, and industrial process and water systems including air washer water and flow-thru cooling towers. As a wood preservative, octhilinone is used as an antisapstain drench to debarked logs.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for octhilinone. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as wood leaching data, environmental runoff monitoring data, soil Koc values and outstanding eco-toxicity data, which are all needed by the Agency to conduct an antisapstain wood treatment risk assessment; and confirmatory worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for octhilinone. Risks of concern associated with the use of octhilinone are: Occupational handler exposure and risks of concern resulting from plastics and vinyl preservation (via liquid pump and liquid pour), paint preservation (via liquid pump and liquid pour), wood preservation (via mixing, loading, high pressure/high volume spraying), professional painter application (via airless sprayer) and use of treated paint; Residential application and post-application risks of concern resulting from treated paint, treated carpet, treated vinyl, treated clothing and treated mattresses; and, Residential aggregate exposure and risks of concern resulting from treated fabrics, clothing and polymers. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to octhilinone, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For octhilinone, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for octhilinone. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

## List of Subjects

Environmental protection, Pesticides and pests, Antimicrobial.

Dated: June 7, 2007.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. E7–11416 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–1002; FRL–8134–1]**

## Antimycin A; Reregistration Eligibility Decision; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide antimycin A and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the antimycin A docket. Antimycin A is a restricted use pesticide applied directly to water – primarily by Federal and state agencies – to eliminate invasive or unwanted fish species. EPA has reviewed antimycin A through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before August 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–1002, 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–2006–1002. 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 Federal 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 web site 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:** Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603–0523; fax number: (703) 308–7070; e-mail address: *wormell.lance@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. 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?*

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, antimycin A under section 4(g)(2)(A) of FIFRA. Antimycin A is a restricted use pesticide applied directly to water – primarily by Federal and state agencies – to eliminate invasive or unwanted fish species. EPA has determined that the data base is adequate to support a reregistration decision and that products containing antimycin A are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing antimycin A.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, antimycin A was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for antimycin A.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the antimycin A RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. 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 Docket for antimycin A. 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 Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the antimycin A RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 6, 2007.

**Peter Caulkins,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E7–11291 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2004–0283; FRL–8132–8]**

## Nitrapyrin; Notice of Receipt of Request to Voluntarily Cancel Nitrapyrin Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel the registration of a product containing the pesticide nitrapyrin. Nitrapyrin is used to delay nitrification of ammonia and urea nitrogen fertilizer compositions in the soil by controlling the nitrification process. The request would terminate one of three remaining nitrapyrin end–use products registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of the product listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before July 13, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0283, 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–2004–0283. 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 Federal 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 web site 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:** Jude Andreasen, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9342; fax number: (703) 308–7070; e-mail address: *andreasen.jude@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. 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:

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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 on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of a written request dated April 13, 2007 from Dow AgroSciences, one of two registrants of nitrapyrin, to cancel one nitrapyrin product registration. Nitrapyrin is a nitrification inhibitor. A list of the affected product is provided in Table 1. There are two other end-use nytrapyrin products registered in the United States.

## III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel one nitrapyrin product registration. The affected product and the registrant making the request are identified in Table 1 and Table 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

Dow AgroSciences, a nitrapyrin registrant, in a letter dated April 26, 2007, has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless the request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registration.

TABLE 1.— NITRAPYRIN PRODUCT REGISTRATION WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product name | Company |
|---|---|---|
| 62719-019 | N-Serve 24E | Dow AgroSciences |

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company name and address |
|---|---|
| 62719 | Dow AgroSciences<br>9330 Zionsville Road<br>Indianapolis, IN 46248-1054 |

## IV. 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.

## V. Procedures for Withdrawal of Request and Considerations for Reregistration of Nitrapyrin

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before July 13, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

## 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.

In any order issued in response to this request for cancellation of a product registration, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1: The registrant will be allowed to sell and distribute the subject products for two years from the date that the cancellations are made final. In addition, existing stocks of nitrapyrin N-Serve 24E may be sold or used until they are depleted.

If the request for voluntary cancellation is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 30, 2007.

**Peter Caulkins,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E7–11210 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8325–9]**

## Final NPDES General Permits for Small Municipal Separate Storm Sewer Systems (sMS4s) in New Mexico, Indian Country Lands in New Mexico and Indian Country Lands in Oklahoma; Minor Revisions and Corrections

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

**ACTION:** Notice of final NPDES General Permits and minor revisions and corrections.

**SUMMARY:** EPA Region 6 is announcing issuance of final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (sMS4s) located in the State of New Mexico (NMR040000), Indian Country Lands in New Mexico (NMR04000I), and Indian Country Lands in Oklahoma (OKR04000I). Hereinafter, the term ''permit'' will be used to refer collectively to all three general permits. A document containing the Agency's responses to public comments on the proposed permit is available. The permit will authorize the discharges from sMS4s in accordance with the terms and conditions described therein. This notice also revises the effective and expiration dates of the permit, as well as the Notice of Intent deadline, and announces minor revisions and corrections to the final permit and supporting documents.

**DATES:** Following 30-day notice and comment periods on the draft permit and a supplemental notice containing revisions to the draft permit, notice of the final permit was originally published in New Mexico and Oklahoma newspapers in October 2006, with a stated effective date of January 1, 2007. The newspaper notices stated that NOIs for coverage under the final permit were due to EPA by April 1, 2007. Due to unforeseen delays in noticing the final permit in the **Federal Register**, EPA is through today's notice revising both the effective date of the final permit and the deadline for filing NOIs. The revised effective date for the general permit is July 1, 2007, and NOIs to be covered will be due October 1, 2007. The revised expiration date of the permit is June 30, 2012. In accordance with 40 CFR 23.2, this action is considered issued for purposes of judicial review as of 1 p.m. eastern daylight time (e.d.t.) on June 27, 2007. Under section 509(b)(1) of the Clean Water Act (CWA) and 40 CFR 124.19, judicial review of the Agency's actions relating to the issuance of an NPDES general permit is available in the United States Court of Appeals within 120 days after the decision is final for the purposes of judicial review. Under CWA section 509(b)(2), the final permit may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** The administrative record is available for inspection and copying at the EPA Region 6 offices at 1445 Ross Ave., Dallas, Texas between 9 a.m. and 4 p.m., Monday–Friday, excluding legal holidays. Please contact Ms. Diane

Smith at (214) 665–2145 to schedule a time to review or copy documents. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the final permit may be obtained from Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2145. The final general permit, Response to Comments document, draft permit fact sheet, supplemental proposal on the draft permit, and other supporting information and guidance are available online via *http://www.epa.gov/region6/6wq/npdes/sw/sms4/index.htm.*

**SUPPLEMENTARY INFORMATION:** The following fact sheet provides background information and explanation for today's notice of the final sMS4 general permit issuance, including a summary Response to Comments regarding comments on the draft permit and changes made to the final permit. Additional information on the statutory and regulatory basis for the permit are found in the fact sheet for the proposed permit, the supplemental proposal on the draft permit, the **Federal Register** notices on the draft permit and supplemental proposal, and the response to comments documents referenced above. Today's notice also makes certain revisions and minor corrections/clarifications to the response to comments document and the permit.

## I. Background

In the 1987 amendments to the CWA, Congress established a phased and tiered approach for addressing pollutants in point source storm water discharges (CWA § 402(p)). Phase I of the NPDES storm water program included requirements for large and medium municipal separate storm systems (MS4s) (55 FR 47990) and Phase II included requirements for small MS4s (64 FR 68722). Today's final sMS4 general permit covers storm water discharges from MS4s meeting the definition of a ''small municipal separate storm sewer system'' at 40 CFR 122.26(b)(16) and any designated under 40 CFR 122.32(a)(1) or 40 CFR 122.32(a)(2). A MS4 consists of a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that collects storm water; is owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA; and discharges to waters of the United States. A sMS4 typically serves a population of less than 100,000. Only those sMS4s located in a Census-defined Urbanized Area or having been designated by the Director are required to apply for permits (see 40 CFR 122.32). Maps of Urbanized Areas and lists of cities and counties within them are available online at *http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm.*

Subsequent to EPA Region 6's proposal of the general permit for sMS4s on September 9, 2003, the U.S. Court of Appeals for the Ninth Circuit denied EPA's petition for rehearing in litigation over EPA's storm water Phase II regulations. *Environmental Defense Center, et al.* v. *EPA*, No. 70014 & consolidated cases (9th Cir., Sept. 15, 2003). Plaintiffs in that litigation challenged the Phase II NPDES storm water regulations issued by EPA pursuant to Clean Water Act (CWA) Section 402(p)(6). Among other things, the Phase II regulations require NPDES permits for storm water discharges from certain MS4s for which NPDES permits were not required under CWA Section 402(p)(2) and the Phase I NPDES storm water regulations. The regulations also require the newly regulated MS4s to develop, implement, and enforce a storm water management program containing, amongst other things, best management practices (BMPs) identified by the discharger. The regulations authorize the use of general permits and require that these BMPs (as well as measurable goals associated with these BMPs) be identified in the NOI filed by the MS4 in seeking authorization under a general permit. Relying on the ''traditional'' general permit model, the Agency did not require NOIs to be reviewed by the Agency, made available to the public for review and comment, or to be subject to public hearings. The Ninth Circuit held that EPA's failure to address these issues in establishing NOI requirements violated various provisions of CWA Section 402, and remanded the Phase II regulations on three grounds related to the use of NPDES general permits to authorize discharges from sMS4s: (1) Public availability of NOIs, (2) opportunity for public hearing, and (3) permitting authority review of NOIs.

On April 16, 2004, EPA's Office of Wastewater Management issued guidance to NPDES permitting authorities entitled ''Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding NOIs & NPDES General Permitting for Phase II MS4s'' (available at *http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf*). This document provides guidance to permitting authorities on addressing the Court's partial remand when issuing general permits for sMS4s. Today's final general permit contains conditions responsive to the partial remand of the Phase II regulations and issues raised in the Court's decision and is consistent with EPA's Office of Wastewater Management Guidance. The final general permit also contains conditions responsive to public comments on the proposed permit and state and tribal certification of the permit under Section 401 of the CWA.

## II. Summary of Significant Changes From the Draft Permits

The following is a list of significant changes from the proposed permit. The rationales for these changes, as well as information about other less significant changes, are discussed below and in the Response to Comments document available as indicated in the ''**FOR FURTHER INFORMATION CONTACT**'' section above. Additional minor clarifications and corrections made to the final permit are discussed separately in Section III.

1. Coverage under the general permit for Indian Country in New Mexico (NMR04000I) will not be available for discharges on the Pueblo of Sandia.

2. Conditions applicable only to specific state and tribal areas have been added to Part 8. These conditions generally consist of requirement for MS4s within their jurisdiction to provide documents to a State or Tribal agency. Under Part 8.1.2, all dischargers in the Albuquerque Urbanized Area are required to submit copies of NOIs, annual reports, and certain other information to the Pueblo of Isleta. Due to denial of CWA § 401 certification of the permit, areas covered by the permit do not include the Pueblo of Sandia.

3. Part 1.2.3 was added to the permit to provide for enhanced public access to and ability to comment on the NOI (and Storm Water Management Program attachment).

4. Part 1.2.4 was added to provide a mechanism for the MS4 operator to provide EPA with responses to any comments in order to assist EPA in making permit coverage decisions.

5. The eligibility requirements related to endangered species protection at Part 1.5 and Appendix A have been revised.

Only where no listed species or critical habitat are in proximity to the MS4's discharges or discharge-related activities will coverage be available without at least an informal consultation with the U.S. Fish and Wildlife Service.

6. Part 2.1.3 has been revised to specify that permit coverage occurs only after written notification by the Director.

7. NOI procedures in Part 3 have been revised. NOIs will be due by October 1, 2007. There will be a 30-day opportunity for the public to review, comment, and request a public meeting/hearing on individual NOIs, and Part 2.1.3 has been changed so coverage will not be effective until notification by the Director. EPA has been alerted by several MS4 operators that satisfying permit eligibility requirements, especially with regard to protection of endangered species, could prevent some sMS4s from meeting the NOI deadline. A MS4 operator is prohibited by the terms of the permit from submitting an NOI until all eligibility conditions have been met. Part 3.1.4 of the permit does allow submittal of late NOIs, which would provide earlier discharge authorization than the individual permit issuance process. To allow more time to work through eligibility issues and provide time for local notice and review of the NOI 60 days prior to submittal, the NOI due date has been set as October 1, 2007. MS4s having difficulty meeting the eligibility conditions for submittal of an NOI, should notify EPA (see address in Part 3.3) of the circumstances causing the delay and progress made to date and then proceed as expeditiously as possible with NOI submittal under Part 3.1.4. For clarification, Part 1.2.3.1 requires local notice and opportunity for public review of the NOI and attachments at least 60 days prior to submittal, with the expectation, but not requirement, that the local review period would be 30 days with the remaining 30 days used by the MS4 operator to review and respond to local comments.

8. Part 5.2.4.3 has been revised to clarify that construction site operators are ultimately responsible for performance of BMPs at their construction site.

9. Part 5.6 has been revised to clarify requirements for analytical vs. non-analytical monitoring and to include more specific monitoring and/or data collection requirements for discharges to impaired waters or waters where an applicable total maximum daily load (TMDL) has been established. A proposed monitoring/assessment plan must be submitted to the Director as part of the first annual report. For discharges to waters on the State's CWA 303(d) list of impaired waters or for which a TMDL has been developed or approved by EPA, the Monitoring/Assessment Plan must include collection of information on the levels of the pollutant(s) of concern in the discharge. Collection of analytical data will be required for MS4s discharging to waters with TMDLs that have specific allocations for the MS4 operator's discharges. Dischargers to impaired waters prior to development of a TMDL or waters with TMDLs that do not specify an allocation for MS4s will be required to gather analytical data, but have the flexibility to participate in cooperative sampling programs or take advantage of existing representative data. Monitoring or assessment recommendations in a TMDL may be used in the proposed monitoring/assessment plan.

10. Part 5.2.4.3 has been revised to clarify that while the MS4 will be reviewing site plans, the construction site operator is ultimately responsible for the performance of the storm water controls selected for the project.

11. Part 5.8.1 contains revisions and a new Part 5.8.1.7 has been added to help ensure the public will have the opportunity to review and provide local input on the annual reports and revisions to the storm water management program as it evolves. The due dates for the annual reports required by Part 5.8.1 have been changed to October 1, 2008, and annually on October 1st thereafter. The reporting period for the Annual Report has been set as July 1—June 30th. Note that this change in the reporting period coincides with the fiscal year used by many municipalities in New Mexico and should ease report preparation for items tracked locally on a fiscal year basis for budgetary purposes.

12. Monitoring requirements at Part 5.6 have been revised to provide clearer expectations and requirements for analytical vs. non-analytical monitoring and assessment programs, particularly with regard to discharges to impaired waters and waters for which a TMDL has been developed or approved. For example, where a specific waste load allocation under a TMDL applies to the MS4's discharges, analytical monitoring will be required to be included in the MS4's monitoring and assessment plan.

13. Addendum E was added to outline the process for providing comments and/or requesting a public meeting/hearing on NOIs during the 30-day public review period described in Section B of Addendum E. Note that a minor correction to Section B is described below.

## III. Revisions and Corrections to the Permit and Response to Comments Documents

EPA has also made typographical and other minor corrections/clarifications to the permit and Response to Comment documents.

*Revisions and Corrections to Permit*

1. Simple typographical corrections (e.g., spelling, format, grammar, etc.) have been made to the permit.

2. A footnote has been added to Part 3.1.1 to provide direction to MS4 operators who are not able to complete all activities necessary to meet permit eligibility in time to meet the due date for NOIs. For example, EPA recognizes that completion of Endangered Species Act consultations can proceed along time lines outside the control of MS4 operator, but are a prerequisite for submittal of an NOI.

3. Consistent with Response to Comment No. 29 and to correct an editorial error, sections of Part 5.2 have been corrected so requirements under each of the six minimum control measures to identify parties responsible for implementing that portion of the Storm Water Management Program all consistently allow for identification of either the ''* * * person(s) or position(s) responsible * * *.''

4. Part 5.7.3, described in Response to Comment No. 23, was inadvertently omitted from the final permit due to a typographical error and has been reinserted. Part 5.7.3 simply highlights the requirement, not as clearly stated in Part 5.7.1 and 5.7.2, to maintain records related to how the permittee determined permit eligibility with regard to Parts 1.4.6, 1.5, and 1.6. No additional record keeping burden is imposed, but the likelihood of permit non-compliance due to failure to recognize the duty to retain such records has been reduced.

5. Part 5.8.1. has been revised to include a footnote offering the option to base the the Annual Report on the permittee's fiscal year rather than the default July-June reporting year, provided the permittee notifies EPA by the first October 1st following permit authorization that this option will be used and confirms the dates of the permittee's fiscal year. Annual Reports based on alternative fiscal years must be submitted no later than (90) days following the end of the fiscal year. During the November 2006, public meeting on the final permits, attendees questioned whether the permit could allow reporting on a fiscal year basis to avoid the additional burden of tracking and reporting information on a calendar year basis for permit purposes when

most information was tracked locally on a fiscal year basis for budgetary purposes. The revised July 1-June 30 annual report period will accommodate most MS4s using the New Mexico fiscal year, but some MS4s may have alternative fiscal years, so flexibility to use alternative fiscal years has been added. This flexibility in the annual report period and due date will still allow the public and regulators to assess the permittee's activities in 12 month increments. Requiring the Annual Report to be submitted within 90 days following the end of the fiscal year will ensure that information in the report will not be stale by the time the public and regulatory agencies review it and is consistent with the time frame in the permit. Having a reporting period coinciding with the local fiscal year may also make local review and public input less confusing.

6. Consistent with Response to Comment No. 22, Part 1.4.6, second paragraph, first sentence has been corrected to replace ''* * * should consult * * *'' with ''* * * must consult * * *.''

7. In Addendum A, references to the U.S. Fish and Wildlife Web site for information on endangered species has been updated to the current link: *http://www.fws.gov/southwest/es/EndangeredSpecies/lists/.*

8. Consistent with Response to Comment No. 33, Addendum C the correct cross references in Item 4 to Part 1.4.6 and Item 7 to Part 5.2 have been added.

9. Addendum E, Section B. has been modified to clarify that the 30-day deadline for submittal of comments on an NOI begins when the NOI information is posted on EPA Region 6's small MS4 NOI web page. The word ''filed'' was inadvertently used in the same sentence in two separate ways. Comments will be due ''* * * within thirty (30) days of the date the NOI is posted on the Web site in Section A.''

10. Part 2.2.3.6 has been corrected to provide the address for submittal of Notices of Termination and remove a reference regarding submittal of copies to the State of New Mexico (which is independently required under Part 8.1.1).

*Revisions and Corrections to the Response to Comments Documents*

1. Response to Comment No. 9 should refer to Response to Comment No. 48 instead of No. 37.

2. Due to an editing error, the last paragraph in Response to Comment No. 28 was inadvertently included in the final document. The final permit did not include a table of expectations for interim progress (which in any event would have been in Part 5 and not Part 4). EPA determined that a single set of expectations could not take into account what programs were already being implemented and what challenges an individual MS4 would face in developing and implementing their programs. Due to the subjective nature of ''credible interim progress,'' the Director will need to evaluate this requirement on a case-by-case basis taking into account the unique situation at a particular MS4. EPA expects that programs will consist of a combination of existing programs, initial effort programs, and schedules for final programs. For example, the initial programs could be based on activities currently underway, activities which can be implemented in the short term (i.e., with existing resources, without changes in ordinances, by relying on available guidance and materials, etc.), and pilot programs. The initial program could also include activities (e.g., illicit discharge screening of the system, etc.) to help prioritize activities and refine options as the final program evolves. In general, EPA would expect that activities such as public involvement would have to begin early in the permit cycle to allow for public input on the final program. The public education, illicit discharge detection and elimination, and proper operation and maintenance/good housekeeping at municipal operations programs would not be expected to take 2–3 years to have in place, with initial program implementation possible earlier. The full construction and post-construction final programs, unless existing programs can be used, would be expected to take 3–5 years to implement due to the need to develop (or adapt) and adopt local standards, rules/ordinances, etc.

3. Response to Comment No. 32 should refer to Part 5.8.1.5 instead of Part 5.6.1.

4. Revisions discussed in Sections II and III supercede any conflicting responses in the September 29, 2006, Response to Comments document.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 31, 2007.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, EPA Region 6.*

[FR Doc. E7–11316 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[Docket ID Number OECA 2005–0081; FRL–8325–1]**

## Safe Drinking Water Act: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Shell Oil Company

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

**ACTION:** Notice.

**SUMMARY:** EPA has entered into a consent agreement with Shell Oil Company (''Shell'' or ''Respondent'') to resolve violations of the Safe Drinking Water Act (''SDWA'') and the Resource Conservation and Recovery Act (''RCRA'') and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order, and providing an opportunity for interested persons to comment on the SDWA portions of this Consent Agreement in accordance with SDWA section 1423(c)(3)(B).

**DATES:** Comments are due on or before July 13, 2007.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Section I. B of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lynn S. Holloway, Waste and Chemical Enforcement Division (2246–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4241; fax: (202) 564–0019; e-mail: *Holloway.Lynn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. How Can I Get Copies of This Document?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OECA–2005–0081.

The official docket consists of the Consent Agreement, proposed Final Order, and any public comments received. The official public docket is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket Information Center (ECDIC) in the EPA Docket Center (EPA/DC) EPA West, Room B102, 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 ECDIC is (202) 566–1752. A reasonable fee may be charged by EPA for copying docket materials.

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/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, 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.

For public commentors, 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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the Docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. 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.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. 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. EPA's policy is that EPA will not edit your comment, and 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments.

Once in the system, select ''search,'' and then key in Docket ID No. OECA–2005–0081. The 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.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *docket.oeca@epa.gov.,* Attention Docket ID No. OECA–2005–0081. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OECA–2005–0081.

3. *By Hand Delivery or Courier.* Deliver your comments to the address provided in Section I.A.1., Attention Docket ID No. OECA 2005–0081. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

## II. Background

Shell Oil Company and affiliates Shell Chemical LP, Equilon Enterprises LLC, Motiva Enterprises LLC, and Criterion Catalysts Technologies, LP (collectively ''Shell'' or ''Respondent''), comprise a global group of energy and petrochemical companies with corporate offices in Houston, Texas. Respondent is authorized to do business in the states of California, Delaware, Illinois, Indiana, Louisiana, Ohio, Texas, and Washington. Respondent is the owner and operator of hazardous waste management facilities subject to regulation under Subtitle C of RCRA. Respondent is also the owner and operator of Class I hazardous waste injection wells subject to regulation under SDWA.

On or about April 9, 2004, pursuant to EPA's Policy on Incentives for Self-Policing (Audit Policy), 65 FR 19618 (April 11, 2000), Respondent submitted its initial voluntary disclosure to EPA regarding potential violations of RCRA's financial responsibility regulations. Respondent submitted additional clarifying disclosures on August 26, 2004, December 9, 2004, and April 13, 2005. Respondent's submissions disclosed that it failed to satisfy certain financial responsibility requirements under RCRA for closure, post-closure care, and third-party liability, and under SDWA for plugging and abandonment, at seventeen facilities in eight states between March 30, 2004 and May 28, 2004.

Respondent's Audit Policy disclosure indicated that based on the need of its parent companies (Royal Dutch Petroleum Company and Shell Transport and Trading Company) to restate certain oil and gas reserves related to years prior to 2003, Respondent's annual report had been delayed, and that its auditor could not complete a certification until the

restatement work by the parent companies was completed. Accordingly, Respondent was not able to submit updated financial information to demonstrate that it met the financial test or corporate guarantee for the seventeen facilities by March 30, 2004, as required by RCRA, SDWA, and their implementing regulations. Respondent's updated financial information in support of its corporate guarantee was not submitted to EPA and the affected states until May 28, 2004.

Section 3008(a) of RCRA, 42 U.S.C. 6928(a), authorizes the EPA to issue compliance orders whenever the EPA determines that any person is violating any requirement of the Act. Pursuant to RCRA section 3006, 42 U.S.C. 6926, California, Delaware, Illinois, Louisiana, Texas, and Washington have been authorized to administer a state hazardous waste program. Any noncompliance with the regulations promulgated pursuant to Subtitle C of RCRA, or with any state provision authorized pursuant to RCRA section 3006, constitutes a violation of RCRA and is subject to the assessment of penalties and issuance of compliance orders pursuant to RCRA section 3008.

Section 3008(h) of RCRA, 42 U.S.C. 6928(h), authorizes EPA to issue orders requiring corrective action or such other measures as EPA may deem necessary to protect human health or the environment. EPA's authority under this section includes, among other things, the authority to require financial assurance for corrective action.

Section 1423 of the SDWA, 42 U.S.C. 300h–2, authorizes the EPA to issue compliance orders whenever the EPA finds that any person is violating any requirement of an Underground Injection Control (UIC) program where a state does not have primary enforcement responsibility. Criterion Catalysts Technologies, LP, a subsidiary of Shell, operates three Class I hazardous waste injection wells in Michigan City, Indiana (UIC Permit Numbers IN–091–0001, IN–091–0002, and IN–091–0004). Indiana does not have primacy over Class I hazardous waste injection wells. *See* 40 CFR 147.751. Therefore, the UIC program for Class I wells in the state of Indiana is administered by EPA.

Specifically, Respondent disclosed that it failed to satisfy the requirements of the corporate guarantee for closure by failing to provide updated financial information within 90 days after the close of FY 2003, at the following nine facilities: Martinez Refining Co. (Martinez, California); Carson Marine Terminal (Carson, California); Delaware City Refinery (Delaware City, Delaware); Wood River Refining Co. (Wood River, Illinois); Odessa Refining Co. (Odessa, Texas); Shell Deer Park Refining Co. (Deer Park, Texas); Westhollow Technology Center (Houston, Texas); Port Arthur Refinery (Port Arthur, Texas); and Puget Sound Refining Co. (Anacortes, Washington), in violation of RCRA section 3008(a), 42 U.S.C. 6928(a), and Cal. Code of Reg. 66264.143(f), 66265.143(f) (California); Del. Admin. Code 7–1000 264–264.143(f) (Delaware); 35 Ill. Adm. Code 724.243(f) (Illinois); LAC 33:V.3707.F. (Louisiana); 30 Texas Admin. Code, 37.251 (Texas); and WAC 173–303–620(4) (Washington).

Respondent further disclosed that it failed to satisfy the requirements of the corporate guarantee for post-closure by failing to provide updated financial information within 90 days after the close of FY 2003, at the following twelve facilities: Martinez Refining Co. (Martinez, California); Los Angeles Refining Co., (Wilmington, California); Delaware City Refinery (Delaware City, Delaware); Wood River Refining Co. (Wood River, Illinois); Norco Chemical Plant—West Site (Norco, Louisiana); Odessa Refining Co. (Odessa, Texas); Shell Deer Park Refining Co. (Deer Park, Texas); Westhollow Technology Center (Houston, Texas); Port Arthur Refinery (Port Arthur, Texas); and Puget Sound Refining Co. (Anacortes, Washington), in violation of RCRA section 3008(a), 42 U.S.C. 6928(a), and 22 Cal. Code of Reg. 66264.145(f), 66265.145(f) (California); Del. Admin. Code 7–1000 264–264.145(f) (Delaware); 35 Ill. Adm. Code 724.245(f) (Illinois); LAC 33:V.3711.F. (Louisiana); 30 Texas Admin. Code, 37.251 (Texas); and WAC 173–303–620(6) (Washington).

Respondent further disclosed that it failed to satisfy the requirements of the corporate guarantee for third-party liability by failing to provide updated financial information within 90 days after the close of FY 2003, at the following twelve facilities: Martinez Refining Co. (Martinez, California); Los Angeles Refining Co., (Wilmington, California); Delaware City Refinery (Delaware City, Delaware); Wood River Refining Co. (Wood River, Illinois); Norco Chemical Plant—West Site (Norco, Louisiana); Odessa Refining Co. (Odessa, Texas); Shell Deer Park Refining Co. (Deer Park, Texas); Westhollow Technology Center (Houston, Texas); Port Arthur Refinery (Port Arthur, Texas); and Puget Sound Refining Co. (Anacortes, Washington), in violation of RCRA section 3008(a), 42 U.S.C. 6928(a), and 22 Cal. Code of Reg. 66264.147(g), 66265.147(g) (California); Del. Admin. Code 7–1000 264–264.147(f) (Delaware); 35 Ill. Adm. Code 724.247(f) (Illinois); LAC 33:V.4411.F. (Louisiana); 30 Texas Admin. Code, 37.404 (Texas); and WAC 173–303–620(8) (Washington).

In addition, Respondent disclosed that it failed to comply with the financial responsibility requirements in the corrective action order under Dkt. No. RCRA–05–2003–0007, issued pursuant to RCRA section 3008(h), 42 U.S.C. 6928(h).

Finally, Respondent disclosed that it failed to satisfy the requirements of the corporate guarantee for plugging and abandonment by failing to provide updated financial information within 90 days after the close of FY 2003, at the following three facilities: Criterion Catalysts (Permit #IN–091–0001) (Michigan City, Indiana); Criterion Catalysts (Permit #IN–091–0002) (Michigan City, Indiana); and Criterion Catalysts (Permit #IN–091–0004) (Michigan City, Indiana), in violation of SDWA section 1421(b), 42 U.S.C. 300h(b), and 40 CFR 144.63(f)(1) and 144.63(f)(5).

EPA, as authorized by RCRA section 3008(g), 42 U.S.C. 6928(g) and SDWA section 1423(c), 42 U.S.C. 300h–2(c), has assessed a civil penalty for these violations.

EPA has determined that Respondent has satisfied all of the conditions set forth in the Audit Policy and thereby qualifies for a 100% reduction of the gravity component of the civil penalty. EPA has determined that the gravity component of the civil penalty is $77,546.50. Of that penalty, $77,391.50 is attributable to the RCRA violations and $155 is attributable to SDWA violations. EPA alleges that this gravity component is assessable against Respondent for the violations that are the basis of this Agreement.

Under the Audit Policy, EPA reserves the right to collect any economic benefit that Respondent may have realized as a result of its noncompliance. Based on information provided by Respondent, EPA has determined that Respondent obtained an economic benefit of $153,949 as a result of its noncompliance. Of this amount, $153,757 is attributable to the RCRA violations and $192 is attributable to the SDWA violations. Accordingly, the civil penalty agreed upon by the parties for settlement purposes is $153,949. Respondent has agreed to pay this amount. EPA and Respondent negotiated this agreement following the Consolidated Rules of Practice, 40 CFR 22.13(b). This Consent Agreement and proposed Final Order is subject to public notice and comment under SDWA section 1423(c)(3)(B), 42 U.S.C.

300h–2(c)(3)(B) and 40 CFR 22.45(b) and (c).

Dated: June 7, 2007.

**Rosemarie A. Kelley,**

*Director, Waste and Chemical Enforcement Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. E7–11418 Filed 6–12–07; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

June 1, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid control number. 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.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 13, 2007. 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:** Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B. Herman@fcc.gov,* Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** *OMB Control Number:* 3060–0865.

*Title:* Wireless Telecommunications Bureau Universal Licensing System (ULS) Recordkeeping and Third Party Disclosure Requirements.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 70,447 respondents; 70,447 responses.

*Estimated Time Per Response:* .25—4 hours (average).

*Frequency of Response:* On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 63,446 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:* There is a need for confidentiality with respect to all Private Land Mobile Radio service filers in this collection. Information on the private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection b. of the Privacy Act. Taxpayer Identification Numbers (TINs) and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records reference above and these and all other records may be disclosed pursuant to the Routine Uses as stated in the system of records notice dated April 5, 2006 (71 FR 17234, 17269).

*Needs and Uses:* The Commission will submit this information collection to OMB as an extension (no change in reporting requirements, recordkeeping requirements and/or third party disclosure requirements) during this comment period to obtain the full three-year clearance from them. The Commission reduced the total annual burden due to an adjustment in the number of responses by licensees who operate within the various service categories of this information collection gathered from the Commission's ULS and CORES databases.

The purpose of this collection is to streamline the set of rules which minimize filing requirements via the Universal Licensing System (ULS); to eliminate redundant and unnecessary submission requirements; and to assure ongoing collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements, along with certifications which made via ULS are ways the Commission reduced the filing burden on the industry. However, applicants must maintain records to document compliance with the requirements for which they provide certifications. In some instances, third party coordinations are required.

*OMB Control Number:* 3060–1007.

*Title:* Streamlining and Other Revisions of Part 25 of the Commission's Rules.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 28 respondents; 28 responses.

*Estimated Time Per Response:* 2.89 hours (average).

*Frequency of Response:* On occasion, annual and other reporting requirements and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 9,688 hours.

*Total Annual Cost:* $95,194,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is a need for confidentiality.

*Needs and Uses:* The Commission will submit this information collection to OMB as an extension (no change in reporting requirements, recordkeeping requirements and/or third party disclosure requirements) during this comment period to obtain the full three-year clearance from them. There is no change in the number of respondents, total annual burden hours or annual costs.

On April 16, 2004, the Commission released a Fourth Report and Order, IB Docket Numbers 02–34 and 00–248, FCC 04–92. In this Order, the Commission extended the mandatory

electronic filing to all space station and earth station applications, related pleadings, and other filings governed by Part 25. Direct Broadcast Satellite (DBS) and Digital Audio Radio Service (DARS) licensees can now use a streamlined procedure when relocating satellites for fleet management purposes. Currently, this procedure is only limited to Geostationary Satellite Orbit (GSO) licensees. The Commission referred to such relocations as ''fleet management'' license modifications. This change will enable the Commission to act on DBS fleet management modifications faster. Under this streamlined procedure, the DBS and DARS licensees may modify its license without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user. In order to utilize the streamlined procedure, the operator is required to meet certain technical requirements contained in Part 25.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–11230 Filed 6–12–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

June 4, 2007.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

**FOR FURTHER INFORMATION CONTACT:** Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–1053.

*OMB Approval Date:* 05/21/2007.

*Expiration Date:* 05/31/2010.

*Title:* 47 CFR 64.604—In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, IP Captioned Telephone Service, Declaratory Ruling, CG Docket No. 03–123.

*Form No.:* None.

*Estimated Annual Burden:* 12 responses; 8 hours per response; 96 total annually hourly burden.

*Needs and Uses:* On August 1, 2003, the Commission released the *Declaratory Ruling,* In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67, FCC 03–190. In the *Declaratory Ruling,* the Commission clarified that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarified that certain TRS mandatory minimum standards does not apply to one-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time beginning August 1, 2003. The waivers were contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604(a)(1) and (a)(3) of the Commission's rules, which contained information collection requirements under the PRA became effective on March 26, 2004.

On July 19, 2005, the Commission released an *Order,* In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67 and CG Docket No. 03–123, FCC 05–141, that clarified two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a form of TRS eligible for compensation from the Interstate TRS Fund. Also, the Commission clarified that certain TRS mandatory minimum standards do not apply to two-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules, for providers that offer two-line captioned VCO service. This clarification increased the number of providers that will be providing one-line and two-line captioned VCO services.

On January 11, 2007, the Commission released a *Declaratory Ruling,* In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–182, granting a request for clarification that Internet Protocol (IP) captioned telephone relay service (IP CTS) is a form of TRS eligible for compensation from the Interstate TRS Fund when offered in compliance with the applicable TRS mandatory minimum standards.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–11233 Filed 6–12–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 7, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number. 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.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 13, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW,

Washington, DC 20554, or via Internet to *Cathy.Williams@fcc.gov* and to Jasmeet Seehra, Office of Management and Budget, Room 10236 NEOB, 725 17th Street, NW. Washington, DC 20503 or via the Internet to *Jasmeet_K._Seehra@omb.eop.gov* or via fax at (202) 395–5167.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0633.

*Title:* Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.1265, Posting or Filing of Station Licenses.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, Not-for-profit institutions.

*Number of Respondents:* 5,875.

*Estimated Hours per Response:* 0.083 hours.

*Frequency of Response:* Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

*Total Annual Burden:* 488 hours.

*Total Annual Cost:* $84,140.

*Nature of Response:* Required to obtain or retain benefits.

*Confidentiality:* No need for confidentiality required.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 73.1230 requires that the station license and any other instrument of station authorization for an AM, FM or TV station be posted in a conspicuous place where the licensee considers to be the principal control point of the transmitter.

47 CFR 74.165 requires that the instrument of authorization for an experimental broadcast station be available at the transmitter site.

47 CFR 74.432(j) (remote pickup broadcast station) and 74.832(j) (low power auxiliary station) requires that the license of a remote pickup broadcast/low power auxiliary station shall be retained in the licensee's files, posted at the transmitter, or posted at the control point of the station. These sections also require the licensee to forward the station license to the FCC in the case of permanent discontinuance of the station.

47 CFR 74.564 (aural broadcast auxiliary stations) requires that the station license and any other instrument of authorization be posted in the room where the transmitter is located, or if operated by remote control, at the operating position.

47 CFR 74.664 (television broadcast auxiliary stations) requires that the station license and any other instrument of authorization be posted in the room where the transmitter is located. Sections 74.765 (low power TV, TV translator and TV booster) and 74.1265 (FM translator stations and FM booster stations), require that the station license and any other instrument of authorization be retained in the station's files. In addition, the call sign of the station, together with the name, address and telephone number of the licensee or the local representative of the licensee, and the name and address of the person and place where the station records are maintained, shall be displayed at the transmitter site on the structure supporting the transmitting antenna.

The Commission is revising this information collection to remove 47 CFR 74.965 from the information collection. The rule section was removed from the CFR. It is not longer in existence.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–11317 Filed 6–12–07; 8:45 am]

**BILLING CODE 6712–10–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, for Extension Under Delegated Authority

June 6, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number. 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.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 13, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, *Cathy.Williams@fcc.gov* and to Jasmeet Seehra, Office of Management and Budget, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jasmeet_K._Seehra@omb.eop.gov* or via fax at (202) 395–5167.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0594.

*Title:* Cost of Service Filing for Regulated Cable Services.

*Form Number:* FCC Form 1220.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local, or Tribal Government.

*Number of Respondents:* 20.

*Estimated Hours per Response:* 4–80 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1,220 hours.

*Total Annual Costs:* $60,000.

*Nature of Response:* Required to obtain or retain benefits.

*Confidentiality:* No need for confidentiality required.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Cable operators file FCC Form 1220 with their Local Franchising Authorities to demonstrate the costs of providing cable service in

order to justify rates above levels determined under the Commission's benchmark methodology. The Commission uses Form 1220 to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under the Commission's rules.

*OMB Control Number:* 3060–0601.

*Title:* Setting Maximum Initiated Permitted Rates for Regulated Cable Services.

*Form Number:* FCC Form 1200.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local, or Tribal Government.

*Number of Respondents:* 100.

*Estimated Hours per Response:* 2–10 hours.

*Frequency of Response:* One time reporting requirement; Annual reporting requirement.

*Total Annual Burden:* 800 hours.

*Total Annual Costs:* $37,500.

*Nature of Response:* Required to obtain or retain benefits.

*Confidentiality:* No need for confidentiality required.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Cable operators and local franchise authorities file FCC Form 1200 to justify the reasonableness of rates in effect on or after May 15, 1994. The FCC uses the data to evaluate cable rates the first time they are reviewed on or after May 15, 1994, so that maximum permitted rates for regulated cable service can be determined.

*OMB Control Number:* 3060–1069.

*Title:* Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, NPRM, MB Docket No. 04–256, FCC 04–173.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1,360.

*Estimated Hour per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1,360 hours.

*Total Annual Cost:* None.

*Nature of Response:* Required to obtain or retain benefits.

*Confidentiality:* No need for confidentiality required.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On July 13, 2004, the Commission adopted a *Notice of Proposed Rule Making (NPRM)*, Attribution of Joint Sales Agreements in Local Television Markets, in MB Docket No. 04–256, FCC 04–173, which proposed to consider whether to amend its attribution rules to attribute certain joint sales agreements (JSAs) between broadcast TV stations located in the same local market. The Commission has not taken any action on this proposal since 2004.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–11407 Filed 6–12–07; 8:45 am]

**BILLING CODE 6712–10–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[WT Docket No. 07–110; DA 07–2185]**

## David O. Castle, Application To Renew License for Amateur Radio Service Station WA9KJI

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission initiates a hearing proceeding before a Commission Administrative Law Judge to determine whether an application to renew the license for Amateur Radio Service Station WA9KJI filed by David O. Castle should be granted.

**DATES:** The document was mailed to the party on May 24, 2007.

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

**FOR FURTHER INFORMATION CONTACT:** Gary Schonman, Enforcement Bureau, at *Gary.Schonman@fcc.gov* or (202) 418–1795 or TTY (202) 418–1152.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Hearing Designation Order* in WT Docket No. 07–110, DA 07–2185, adopted by the Commission's Wireless Telecommunications Bureau on May 23, 2007, and released on May 24, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**Synopsis of the Order**

1. In this *Hearing Designation Order,* the Commission commences a hearing proceeding before a Commission Administrative Law Judge to determine whether the above-captioned application filed by David O. Castle for renewal of his license for Amateur Radio Station WA9KJI should be granted. As discussed below, the record before us indicates that Castle has apparently willfully and repeatedly engaged in unlawful Commission-related activities, including intentionally causing interference, broadcasting without communicating with any particular station, and using slanderous, harassing, and indecent language on amateur frequencies. Based on the information before us, we believe that Castle's apparent continuing course of misconduct raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Accordingly, we hereby designate his application for hearing.

2. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order,* upon the following issues:

(a) To determine whether David O. Castle willfully and/or repeatedly violated Section 333 of the Communications Act of 1934, as amended, and § 97.101(d) of the Commission's Rules, by intentionally interfering with radio communications;

(b) To determine whether David O. Castle willfully and/or repeatedly violated § 97.113(b) of the Commission's Rules by broadcasting one-way communications on amateur frequencies;

(c) To determine whether David O. Castle willfully and/or repeatedly violated § 97.113(a)(4) of the Commission's Rules by transmitting indecent language;

(d) To determine the effect, if any, of the use by David O. Castle of his amateur license to engage in criminal behavior on his qualifications to be and remain a Commission licensee;

(e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether David O. Castle is qualified to be and remain a Commission licensee;

(f) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned

application filed by David O. Castle should be granted.

3. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), in order to avail himself of the opportunity to be heard, David O. Castle, in person or by his attorney, SHALL FILE with the Commission, within twenty calendar days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

4. Pursuant to § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), if David O. Castle fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

5. The Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

6. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on David O. Castle.

7. A copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the **Federal Register**.

8. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, and 0.331.

Federal Communications Commission.

**Scot Stone,**

*Deputy Chief, Mobility Division.*

[FR Doc. E7–11245 Filed 6–12–07; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[WT Docket No. 07–109; DA 07–2184]**

## Frank C. Richards, Application for New License in the Amateur Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission initiates a hearing proceeding before a Commission Administrative Law Judge (ALJ) to determine whether an application for a new license in the Amateur Radio Service filed by Frank C. Richards should be granted.

**DATES:** The document was mailed to the party on May 24, 2007.

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

**FOR FURTHER INFORMATION CONTACT:** Gary Schonman, Enforcement Bureau, at *Gary.Schonman@fcc.gov* or (202) 418–1795 or TTY (202) 418–1152.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Hearing Designation Order* in WT Docket No. 07–109, DA 07–2184, adopted by the Commission's Wireless Telecommunications Bureau on May 23, 2007, and released on May 24, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

### Synopsis of the Order

1. In this *Hearing Designation Order* the Commission initiates a hearing proceeding before a Commission Administrative Law Judge to determine whether an application for a new license in the Amateur Radio Service filed by Frank C. Richards should be granted. The record before the Commission suggests that Frank C. Richards, who resides in New York, submitted a fraudulent application to obtain the privileges associated with call sign KB4VU belonging to Frank C. Richards of Florida. Such action raises substantial and material questions of fact as to whether Frank C. Richards possesses the requisite character qualification to be a Commission licensee. Because we are unable to make a determination on the record currently before us that grant of Frank C. Richards' application for a new amateur license would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by 47 U.S.C. 309(e) of the Communications Act of 1934, as amended.

2. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order,* upon the following issues:

(a) To determine whether Frank C. Richards made false certifications, misrepresentations to, and or lacked candor before, the Commission in applications and or responses to Commission inquires.

(b) To determine the effect of Frank C. Richards' representations of fact to, and candor before, the Commission on his qualifications to be licensed by the Commission.

(c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Frank C. Richards is qualified to be a Commission licensee.

(d) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Frank C. Richards should be granted.

3. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 1.221(c) of the Commission's rules, 47 CFR 1.221(c), in order to avail himself of the opportunity to be heard, Frank C. Richards, in person or by his attorney, SHALL FILE with the Commission, within twenty calendar days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

4. Pursuant to § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), if Frank C. Richards fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

5. The Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

6. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on Frank C. Richards.

7. A copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the **Federal Register**.

8. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

**Scot Stone,**

*Deputy Chief, Mobility Division.*

[FR Doc. E7–11231 Filed 6–12–07; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[WT Docket No. 07–108; DA 07–2183]**

## Jack R. Sharples, Application for New License in the Amateur Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission initiates a hearing proceeding before a Commission Administrative Law Judge to determine whether an application for a new license in the Amateur Radio Service Station filed by Jack R. Sharples should be granted.

**DATES:** The document was mailed to the party on May 24, 2007.

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

**FOR FURTHER INFORMATION CONTACT:** Gary Schonman, Enforcement Bureau, at *Gary.Schonman@fcc.gov* or (202) 418–1795 or TTY (202) 418–1152.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Hearing Designation Order* in WT Docket No. 07–108, DA 07–2183, adopted by the Commission's Wireless Telecommunications Bureau on May 23, 2007, and released on May 24, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**Synopsis of the Order**

1. In this *Hearing Designation Order* the Commission initiates a hearing proceeding before a Commission Administrative Law Judge to determine whether an application for a new license in the Amateur Radio Service filed by Jack R. Sharples should be granted. The record before the Commission indicates that Sharples is a convicted felon and registered sexual predator, which raises a substantial and material question of fact as to whether Castle possesses the requisite character qualification to be and remain a Commission licensee. Because we are unable to make a determination on the record currently before us that grant of Sharples's application to renew his amateur license would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by 47 U.S.C. 309(e) of the Communications Act of 1934, as amended.

2. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

(a) To determine the effect of Jack R. Sharples's felony adjudication(s) on his qualifications to be licensed by the Commission.

(b) In light of the evidence adduced pursuant to the foregoing issue, to determine whether Jack R. Sharples is qualified to be a Commission licensee.

(c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Jack R. Sharples should be granted.

2. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), in order to avail himself of the opportunity to be heard, Jack R. Sharples, in person or by his attorney, SHALL FILE with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

3. Pursuant to § 1.221(c) of the Commission's Rules, 47 CFR 1.221(c), if Jack R. Sharples fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

4. The Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

5. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on Jack R. Sharples.

6. A copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the **Federal Register.**

7. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

**Scot Stone,**

*Deputy Chief, Mobility Division.*

[FR Doc. E7–11243 Filed 6–12–07; 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 Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

*Agreement No.:* 011906–001.

*Title:* HSDG/ELJSA Space Charter Agreement.

*Parties:* Hamburg Sud and Evergreen Marine Corp. (Taiwan) Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment would substitute Evergreen Line Joint Service Agreement (''ELJSA'') for Evergreen Marine Corp. and address ELJSA's obligations in light of this substitution. It would also clarify Article 10 and rename and restate the agreement.

*Agreement No.:* 011998–001.

*Title:* CSAV/EUKOR Venezuela Space Charter Agreement.

*Parties:* EUKOR Car Carriers, Inc. and Compania Sud Americana de Vapores.

*Filing Party:* Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Ave.; New York, NY 10016.

*Synopsis:* The amendment adds the port of Jacksonville, Florida, to the geographic scope of the agreement.

*Agreement No.:* 012003.

*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:* David B. Cook, Esq.; Goodwin Proctor LLP; 901 New York Avenue, NW.; Washington, DC 20001.

*Synopsis:* The agreement authorizes the parties to share vessel space and engage in related cooperative activities in the trade between China (including Hong Kong) and Panama and the U.S. East Coast.

*Agreement No.:* 012004.

*Title:* HMM/ELJSA Slot Exchange Agreement.

*Parties:* Hyundai Merchant Marine Co., Ltd. and Evergreen Line Joint Service Agreement.

*Filing Party:* Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

*Synopsis:* The agreement authorizes the parties to exchange container slots in the trade between U.S. East Coast ports and ports in China, Japan, South Korea, Taiwan, and Panama. This agreement replaces an earlier agreement between the parties in the trade.

*Agreement No.:* 201162–002.

*Title:* NYSA–ILA Assessment Agreement.

*Parties:* New York Shipping Association, Inc. and the International Longshoremen's Association, AFL–CIO for the Port of New York and New Jersey.

*Filing Parties:* Richard P. Lerner, Esq.; The Lambos Firm; 29 Broadway—9th Floor; New York, NY 10006; and Andre Mazzola, Esq.; Gleason, Marrinan & Mazzola Mardon, P.C.; 26 Broadway—17th Floor; New York, NY 10004.

*Synopsis:* The amendment revises and sets assessment rates for certain containers.

By Order of the Federal Maritime Commission.

Dated: June 8, 2007.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E7–11411 Filed 6–12–07; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. 07–05]**

### K.E.I. Enterprise d/b/a KEI Logix v. Greenwest Activewear, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by K.E.I. Enterprise d/b/a KEI Logix. Complainant asserts that it is a corporation formed and existing under the laws of the State of California and is licensed by the Commission as a Non-Vessel-Operating Common Carrier. Complainant alleges that Respondent, Greenwest Activewear, Inc., is an exporter of fabric and other goods that has its principal place of business in California. Complainant also alleges that Respondent's place of incorporation is unknown.

Complainant asserts that it transported fabric from the United States to Guatemala on behalf of Respondent on an ongoing basis during 2006. Complainant contends that Respondent refused to pay freight due on other shipments as a result of Complainant's denial to fulfill a claim filed by Respondent for cargo stolen while in transit by an inland carrier in Guatemala. Accordingly, Complainant refused to release these other shipments. Complainant claims that a compromise was reached whereby Respondent agreed to pay Complainant freight due in the amount of $101,019.08, and Complainant would release all of Respondent's cargo. Complainant avers that, pursuant to the compromise, on May 16, 2007, Respondent delivered three postdated checks totaling $101,019.08, and Complainant subsequently released Respondent's cargo on that same day. On May 17, 2007, Complainant asserts that it was informed by Respondent's bank that Respondent had placed a stop payment order on the postdated checks totaling $101,019.08.

Complainant contends that Respondent violated of the Shipping Act of 1984 (''the Shipping Act'') by inducing Complainant to relinquish the cargo and lose its possessory maritime lien when it purportedly made payment of freight by postdated checks, knowing that it would stop payment on such checks once Complainant released the cargo. Complainant asserts that Respondent knowingly and willfully, by means of unjust or unfair device, obtained ocean transportation for property at less than the rates or charges that Complainant would otherwise apply. 46 U.S.C. 41102(a).

Complainant asserts that it has been injured and damaged in the sum of $108,019.08. Complainant requests that the Commission require Respondent to: (1) Answer the charges in the subject complaint; (2) cease and desist from the aforesaid violation of the Shipping Act; and (3) pay to Complainant by way of reparations the sum of $108,019.08 with interest and attorney's fees and any other sums as the Commission determines to be proper under the Shipping Act. 46 U.S.C. 41305(b). Additionally, Complainant requests that the Commission issue further order(s) as it determines to be proper in the premises, and that the hearing be in Los Angeles, California.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 6, 2008, and the final decision of the Commission shall be issued by October 6, 2008.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E7–11402 Filed 6–12–07; 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 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**

Cosmo Freight Solutions, Inc., 154–09 146th, Unit #3C, Jamaica, NY 11434, *Officers:* Steve Chang, Secretary (Qualifying Individual), Matthew Wong, President.

Samrat Container Lines, Inc., 2060 Oak Tree Road, 1st Fl. East, Edison, NJ 08820, *Officers:* Milton D'Souza, President (Qualifying Individual), Deepak Lall, Vice President.

Poseidon Agencies, Inc. dba Poseidon Shipping & Trading Co., 601 Heritage Drive, Suite 111, Jupiter, FL 33458, *Officer:* Niko Alexander Tomc, Sr., President (Qualifying Individual).

DS Logistics USA, LLC, 176 Fort Lee Road, #2A, Leonia, NJ 07605, Officers: Woo Do Lim, Member (Qualifying Individual), Sun Hwa Lee, Member.

TFMarine, Inc., 452 Glynwynne Road, Haverford, PA 19041, *Officers:* Thomas F. Mosimann, Jr. (Qualifying Individual), Walter Penney, Secretary.

Good One Logistics Inc., 1001 Nicholas Blvd., Unit A, Elk Grove Village, IL 60007, *Officers:* Anne Lai, President (Qualifying Individual), Dennis Lai, Treasurer.

Fastway Moving and Trading Corp., 4100 N. Powerline Rd., Suite W–3, Pompano Beach, FL 33073, *Officers:* Leonardo P. Albuquerque, President (Qualifying Individual), Victor Sancho Passos, Vice President.

Surexpress, Inc., 10725 Springdale Avenue, Unit #1, Santa Fe Springs, CA 90670, *Officers:* Oscar P. Luna, Secretary (Qualifying Individual), Fabian Cerutti, President.

Shiplane Transport, Inc., 2620 N. Oak Park, Chicago, IL 60707, *Officers:* Elizabeth Esparza, Vice President (Qualifying Individual), Claudia Esparza, Secretary.

Lloyds Global Logistics, Inc. dba Lloydscargo, 615 N. Nash Street, Suite #303, El Segundo, CA 90245, *Officer:* Arthur R. Biancone, President (Qualifying Individual).

Fastway Moving and Services Inc., 52 Butler Street, Elizabeth, NJ 07206, *Officers:* Leonardo P. Albuquerque, V.P. Bus. Development (Qualifying Individual), Victor Sancho Passos, Vice President.

Gallagher International LLC, 5301 Jefferson Highway, New Orleans, LA 70123, *Officers:* Bonny B. Maloney, Manager (Qualifying Individual), Robert S. Maloney, Owner/Manager.

**Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

D.L. International Logistics, Inc., 3500 NW. 115th Avenue, Doral, FL 33178, *Officers:* Sandra De Leon, Ocean Coordinator (Qualifying Individual), Fernando De Leon, President.

Pathfinder Logistics International, LLC, dba Olympic Freight, 11729 NE Glenn Widing Drive, Portland, OR 97220, *Officers:* Lucy Viall, Vice President (Qualifying Individual), Jeffrey R. Wannamaker, President.

A+ Airfreight, Inc., 8003 Hertfordshire, Spring, TX 77379, *Officers:* Freddie J. Boren, President (Qualifying Individual), Brenda J. Boren, Director.

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants**

Soo Hoo Customs Broker dba Soo Hoo Shipping, 205 S. Broadway, #708, Los Angeles, CA 90012, *Officers:* Brian S. Soo Hoo, President (Qualifying Individual).

S E Transportation, LLC, 26224 Enterprise Ct., Lake Forest, CA 92630, *Officers:* Sheila Carden, President (Qualifying Individual), Eric Carden, Vice President.

Dated: June 8, 2007.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E7–11414 Filed 6–12–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 016290N.

*Name:* Delmar Logistics, Inc.

*Address:* 9310 S. La Cienega Blvd., Inglewood, CA 90301.

*Date Revoked:* May 9, 2007.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E7–11401 Filed 6–12–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 012686N | Gulf American Line, Inc., 330 Snyder Avenue, Berkeley Heights, NJ 07922 | May 9, 2007. |
| 002769F | New York Forwarding Services Inc., 330 Snyder Avenue, Berkeley Heights, NJ 07922 | May 13, 2007. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E7–11394 Filed 6–12–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Rescission of Order of Revocations

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

*License Number:* 019267N.

*Name:* Seagold (USA) Inc.

*Address:* 262 West 38th Street, Suite 406, New York, NY 10016.

*Order Published:* FR: 05/15/07 (Volume 72, No. 93, Pg. 27310).

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E7–11397 Filed 6–12–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 2007.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Bob Hutchinson*, Paintsville, Kentucky; to acquire up to 10.5 percent of the voting shares of Citizens National Corporation, and thereby indirectly acquire shares of Citizens National Bank of Paintsville, both of Paintsville, Kentucky.

Board of Governors of the Federal Reserve System, June 8, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7–11380 Filed 6–12–07; 8:45 am]

BILLING CODE 6210–01–S

## 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 July 9, 2007.

**A. Federal Reserve Bank of Cleveland** (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Citizens National Corporation*, Paintsville, Kentucky; to acquire 100 percent of the voting shares of Kentucky National Bank of Pikeville, Pikeville, Kentucky.

Board of Governors of the Federal Reserve System, June 8, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7–11382 Filed 6–12–07; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2007.

**A. Federal Reserve Bank of Atlanta** (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Bancolombia S.A.*, Medellin, Columbia, to acquire Bienes y Servicios, S.A., Santa Tecla, El Salvador, and thereby engage in activities related to money transfer services and selling prepaid calling cards, pursuant to sections 225.28(b)(14)(i) and (ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7–11379 Filed 6–12–07; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations—Working Group on Quality.

*Time and Date:* 9 a.m.–5:30 p.m., June 19, 2007.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 505A, Washington, DC 20201.

*Status:* Open.

*Purpose:* At this meeting the Subcommittee will learn about the current state of inpatient health care quality reporting utilizing one of three models: (1) All administrative data, (2) all electronic health record data, and (3) hybrid of administrative and electronic data. The anticipated knowledge to be gained includes the following: demonstration of effective models; demonstration of pitfalls to

be avoided; and, identification of data elements that have been shown to add value and that should be considered as a structured element in electronic health records.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Anna Poker, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Working Group on Quality, Agency for Healthcare Research and Quality, Center for Quality Improvement and Patient Safety, 540 Gaither Road, Room #3331, Rockville, MD 20850, Phone: 301–427–1802; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: May 31, 2007.

**James Scanlon,**

*Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 07–2920 Filed 6–12–07; 8:45 am]

**BILLING CODE 4151–05–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–231]**

### Development of Set 21 Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of Development of Toxicological Profiles.

**SUMMARY:** This notice announces the development of Set 21 Toxicological Profiles. Set 21 Toxicological Profiles consists of one new draft and six updated drafts. These profiles will be available to the public on or about October 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Contact Commander Jessilynn B. Taylor, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488–3313. Electronic access to these documents will also be available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on December 7, 2005 (70 FR 702840). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014) and November 7, 2003 (68 FR 63098).

Notice of the availability of drafts of these six updated and one new toxicological profiles for public review and comment will be published in the **Federal Register** on or about October 17, 2007, with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments will be addressed, and, where appropriate, changes will be incorporated into each profile.

**Development of Toxicological Profiles**

This notice announces the development of one new and six updated toxicological profiles of priority hazardous substances comprising the twenty first set prepared by ATSDR. The following toxicological profiles are now being developed:

SET 21 TOXICOLOGICAL PROFILES

| Toxicological profile | CAS No. |
|---|---|
| 1. Boron | 7440–42–8 |
| 2. Chlorine* | 7782–50–5 |
| 3. 1,4-Dioxane | 123–91–1 |
| 4. Ethyl Benzene | 100–41–4 |
| 5. Ethylene Glycol | 107–21–1 |
| 6. Plutonium | 7440–07–5 |
| 7. Styrene | 100–42–5 |

*Denotes new profile.

Dated: May 31, 2007.

**Kenneth Rose,**

*Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.*

[FR Doc. E7–11385 Filed 6–12–07; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30 Day–07–0727]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Survey of Illness and Injury Among Backcountry Users in Yellowstone National Park—Revision—Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

There are few data on the risk factors for illness and injury among persons who travel into the backcountry in the United States. The backcountry encompasses primitive or wilderness areas that lack most facilities and services and that are reached primarily by hiking, boating, or horseback. In general, backcountry users must bring in their own supplies (such as shelter, food, water, or water treatment supplies). As many as 56% to 94% of long-distance hikers and backpackers

have reported experiencing illnesses or injuries during their time in the backcountry.

Such a high burden of disease has significant medical and economic implications given the increasing popularity of backcountry use. In 2004, an estimated 12% of Americans age 16 years and older (about 26 million persons) went backpacking in the previous 12 months, which involved camping for one or more nights along a trail and carrying food, shelter, and utensils with them. In the same period of time, about 15% (or 33 million persons) camped in primitive settings that usually lacked restrooms, hookups, and most facilities and services. In fact, camping in backcountry areas grew by about 184% from 1982–83 to 2004. While people can travel in the backcountry in many locations and on both private and public lands, many travelers hike, backpack, and camp in the backcountry in national parks. In 2006, there were more than 272 million recreational visits to national parks with more than 1.6 million overnight stays in the backcountry. Yellowstone National Park alone had 12,673 persons visit the backcountry in 2006, accounting for more than 37,000 overnight stays.

Because little is known about the health outcomes for visitors who use the backcountry areas of our nation's parks, advice to park managers and the public is currently general in nature, based only on standard disease prevention principles. Furthermore, some outdoor use groups have recently questioned some of this standard advice, such as the universal need for careful filtration and disinfection of backcountry drinking water. This study will investigate behavioral and environmental risk factors that may be associated with illness and injury among persons who require park permits to travel into backcountry areas in Yellowstone National Park during the backcountry season from May 1–Oct. 31, 2008. The data collected will be used to provide an estimate of the burden of illness and injury among backcountry users and will also provide information about a variety of risk factors for illness and injury in the backcountry, including the risks associated with drinking untreated water from lakes and streams. With this information, the National Park Service (NPS) will be able to address many of the questions raised by outdoor users and public health officials, and improve and strengthen evidence-based NPS guidelines for backcountry health and sanitation practices. To gather this information, consent to contact after the conclusion of the backcountry trip will be requested from an estimated 10,138 adult backcountry users when they present to the Yellowstone National Park's permit offices prior to entering the backcountry. A questionnaire (in either Internet-based or paper-based format) will then be offered to an estimated 3,532 adult backcountry users who consent to be contacted. Participants will be asked about their health (before, during and after backcountry travel), water consumption, water preparation habits, food consumption, food preparation habits, sanitation practices, recreational water use, animal exposure, and demographics.

This study is the beginning of what will be an on-going effort to improve the science-basis of the NPS recommendations and policies related to protecting human health in the backcountry. This effort seeks to begin to identify disease transmission pathways and assess disease and injury risks associated with specific activities, choices, and behaviors of backcountry visitors, such as water purification, sanitation practices, and hygiene. Thoroughly understanding transmission pathways and the interactions of agent, environment, and host will enable the NPS to effectively and efficiently improve visitor protection efforts. There will be no cost to respondents other than their time. Participation is voluntary and will not affect the application process for the backcountry use permit. The total estimated annualized hours requested are 2,141.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| Consent to Further Contact | 10,138 | 1 | 2/60 |
| Web-Based Questionnaire | 3,423 | 1 | 30/60 |
| Paper-Based Questionnaire | 109 | 1 | 50/60 |

Dated: June 7, 2007.

**Maryam Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–11384 Filed 6–12–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2007N–0218]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Adverse Event Pilot Program for Medical Products (Formally Medical Device Adverse Event Reporting Program)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed continuing collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the continuation of a pilot project to evaluate the electronic collection of the 3500A form for adverse events related to the use of medical products to obtain data from user facilities participating in the Medical Device Safety Network (MedSun). Additionally, the electronic form will include hospital profile information and several other questions

related to the use of medical products. A portion of the MedSun software, called Device-Safety Exchange (DS–X) (formerly called M–Den), is a moderated site where MedSun members may share information with each other.

**DATES:** Submit written comments on the collection of information by August 13, 2007.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed continuing collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Adverse Event Pilot Program for Medical Products—21 U.S.C. 360(i) (OMB Control Number 0910–0471)—Extension**

Under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(i)), FDA is authorized to require: Manufacturers to report medical device related deaths, serious injuries, and malfunctions; and user facilities to report device-related deaths directly to manufacturers and FDA, and to report serious injuries to the manufacturer. Section 213 of the FDA Modernization Act of 1997 (FDAMA), amended section 519(b) of the act (21 U.S.C. 360i(b)) relating to mandatory reporting by user facilities of deaths and serious injuries and serious illnesses associated with the use of medical devices. This amendment legislated the replacement of universal user facility reporting by a system that is limited to a ''* * * subset of user facilities that constitutes a representative profile of user reports'' for device related deaths and serious injuries. This amendment is reflected in section 519(b)(5)(A) of the act. The current universal reporting system remains in place during the pilot stages of the new program, and until FDA implements the new national system by regulation. This legislation provides FDA with the opportunity to design and implement a national surveillance network, composed of well-trained clinical facilities, to provide high quality data on medical devices in clinical use. This system is called MedSun.

FDA is continuing to conduct a pilot of the MedSun system before the agency issues a regulation to change from universal mandatory reporting for medical device user facilities to reporting by a representative sample of facilities. This data collection has been ongoing since February 20, 2002, and this notice is for continuation of this data collection.

FDA is seeking OMB clearance to continue to use electronic data collection to obtain the information on the 3500A Form related to medical devices and tissue products from the user facilities participating in MedSun, to obtain a demographic profile of the facilities, and to pilot a few additional questions which will permit FDA to better understand the cause of the reported adverse event. During the pilot program, participants will be asked to complete an annual outcome measures form to aid FDA in evaluating the effectiveness of the program. Participation in this pilot is voluntary and currently includes 400 facilities and over 100 beds. The use of an interactive electronic data collection system is easier and more efficient for the participating user facilities to use than the alternative paper system. The paper form takes approximately 1 hour to complete and the electronic version takes approximately 45 minutes, or less, to complete. Much of the data which must be filled in by hand on the paper system is automatically filled in by the electronic version.

In addition to collecting data on the electronic adverse event report form, MedSun also collects data electronically in DS–X. This data collection is also voluntary, and is an FDA moderated site. MedSun sites may send in ''success stories'' describing quality improvement initiatives they have implemented to improve patient safety with medical products and also may send in medical product related questions to which other sites may respond. The maximum time it takes to enter a story or write or respond to a question is 30 minutes.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Section of the Act | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 519(b) Facilities participating in the electronic reporting of adverse events program | 400 | 15 | 6,000 | .75 | 4,500 |
| 519 (b) Facilities participating in DS–X (not used by all sites) | 200 | 5 | 1,000 | .50 | 500 |
| Total | | | | | 5,000 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for the electronic reporting of adverse events is based on the number of facilities currently participating in MedSun (400) and the number of sites (50) expected to be added to the program over the next 3 years. The current average number of reports per site is 7 reports annually. For purposes of this renewed data collection, we are estimating an average of 15 reports per site annually. This increase is expected since MedSun is working to promote reporting in general from the sites, as well as promoting reporting from specific parts of the hospitals, such as the pediatric intensive care units, electrophysiology laboratories, and the hospital laboratories.

Therefore, this yields a total annual responses of 6,000 (400 facilities x 15 data entries = 6,000.) The participating MedSun reporters tell FDA that it typically takes 20 to 45 minutes to fill out the online form. Using the high end of that timeframe, the overall annual burden hours will be 4,500 hours (6,000 report entries x 0.75 hours = 4,500 hours).

Determining burden for the DS–X portion of MedSun: Not all sites use this part of the software. To determine the total annual responses for DS–X: 200 participants multiplied by the number of times each will access DS–X yields annual responses of 1,000 reports.

It typically takes an average of 30 minutes to enter data into DS–X, given that there are various types of data entries which are possible, some of which are lengthier than others. The number of burden hours for DS–X is determined by multiplying the expected 1,000 times the site will be accessed by the average amount of time it takes to make a DS–X data entry (30 minutes). This equals a burden of 500 hours (1,000 x 0.50 = 500).

The total burden hours for MedSun and DS–X data entry equals 8,000 hours (7,500 for MedSun and 500 for DS–X).

Dated: June 7, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7–11400 Filed 6–12–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, June 14, 2007, 1:15 p.m. to June 15, 2007, 11:45 a.m. National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 21, 2007, 72 FR 28512.

This notice is amended to add the NCAB Ad Hoc Subcommittee on Experimental Therapeutics meeting on June 14, 2007 from 8:30 p.m. to 10:30 p.m. at the Bethesda Hyatt Hotel, One Metro Center, Bethesda, MD 20814. The meeting is open to the public.

Dated: June 6, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2902 Filed 6–12–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center on Minority Health and Health Disparities Special Emphasis Panel; Research Infrastructure in Minority Institutions (RIMI) Meeting.

*Date:* July 22–24, 2007.

*Time:* 5 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Robert Nettey, MD, Scientific Review Administrator, National Institute on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 496–3996.

Dated: June 6, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2903 Filed 6–12–07; 8:45 am]

**BILLING CODE: 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Autism Centers Review.

*Date:* July 9, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Disaster Mental Health Centers Review.

*Date:* July 26, 2007.

*Time:* 10 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development

Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 6, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2904 Filed 6–12–07; 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.

*Date:* June 26–27, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* For questions or to register, please call Circle Solutions at (703) 902–1139 or via the Web site *http://www.circlesolutions.com/ncs/ncsac*. Advanced registration is required due to space limitations. Registration deadline is June 8, 2007. The agenda will include progress regarding the research plan and protocol, informed consent, adjunct studies and engaging health care providers in the NCS.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Kate Costella, Executive Secretary, National Children's Study, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: June 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2905 Filed 6–12–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Epidemiology of Urological Disorders.

*Date:* June 28, 2007.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Maria E. Davila-Bloom, PhD; Scientific Review Administrator; Review Branch, DEA, NIDDK; National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Type II Diabetes Ancillary R01 Applications Review.

*Date:* July 6, 2007.

*Time:* 2:05 p.m. to 4:05 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Xiaodu Guo, MD, PhD; Scientific Review Administrator; Review Branch, DEA, NIDDK; National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–N 04.

*Date:* July 19, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health; Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* D.G. Patel, PhD; Scientific Review Administrator; Review Branch, DEA, NIDDK; National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2907 Filed 6–12–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, July 11, 2007, 4 p.m. to 6 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on June 4, 2007, 72 FR 30811.

The meeting will be held July 10, 2007. The meeting is closed to the public.

Dated: June 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2908 Filed 6–12–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Voice, Speech and Language.

*Date:* July 3, 2007.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christine A. Livingston, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2909 Filed 6–12–07; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vulnerability and Intervention for Personality Disorders.

*Date:* June 20, 2007.

*Time:* 5 p.m. to 9 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

*Contact Person:* Gabriel B. Fosu, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215 MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@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; Alcohol, Smoking and Substance Use Disorders and Interventions.

*Date:* June 27, 2007.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Gabriel B. Fosu, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Members Conflict: Lymphocyte Development Special Emphasis Panel.

*Date:* July 2, 2007.

*Time:* 1 p.m. to 2:30 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:* Patrick K. Lai, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, (301) 435–1052, *laip@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Non-HIV Microbial Vaccine Development.

*Date:* July 9, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Jin Huang, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Physical Activity, Weight Control and Chronic Conditions.

*Date:* July 9–10, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Gabriel B. Fosu, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, 301–435–3562, *fosug@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; SBIR/STTR Early Childhood Behaviors and Adolescent/Adult Addictions.

*Date:* July 9, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Morrison House Hotel, 116 S. Alfred Street, Alexandria, VA 22314.

*Contact Person:* Claire E. Gutkin, PhD, MPH; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; VMD Member Conflict Application Review.

*Date:* July 9, 2007.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Jin Huang, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Trafficking, Plasticity, and Gene Expression.

*Date:* July 10–11, 2007.

*Time:* 9 a.m. to 9 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Joanne T. Fujii, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, 301–435–1178, *fujiij@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; LIRR Member Conflicts.

*Date:* July 10, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* George M. Barnas, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Developmental Transitions: Mental Conditions, Socio-Economic Disadvantage and Drug Abuse.

*Date:* July 11, 2007.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Ischemic Injury and Neurodegeneration.

*Date:* July 11, 2007.

*Time:* 2 p.m. to 3:30 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:* Geoffrey G. Schofield, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, (301) 435–1235, *geoffrey@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Intervention for Cancer, Pain and Cardiovascular.

*Date:* July 12–13, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Gabriel B. Fosu, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RIBT Member Conflicts.

*Date:* July 12, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* George M. Barnas, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301)–435–0696, *barnasg@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group; HIV/AIDS Vacancies Study Section,

*Date:* July 13, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Mary Clare Walker, PhD; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Psychopathology, Developmental Disabilities, Stress and Aging Fellowship Study Section.

*Date:* July 13, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Fairmont Hotel, 2410 M Street, NW, Washington, DC 20037.

*Contact Person:* Maribeth Champoux, PhD; Scientific Review Administrator, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301 594–3163, *champoum@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; HIV/AIDS Small Business Innovative Research Applications.

*Date:* July 13, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and grant applications.

*Place:* The Watergate Hotel, 2650 Virginia Avenue, NW, Washington, DC 20037.

*Contact Person:* Kenneth A. Roebuck, PhD.; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Risk Prevention and Health Behavior Fellowships.

*Date:* July 13, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion; 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Karen Lechter, PhD.; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301) 496–0726, *lechterk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Diabetes and Vascular Inflammation.

*Date:* July 13, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Rajiv Kumar, PhD.; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *kumarra@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Endocrinology and Metabolism.

*Date:* July 13, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Krish Krishnan, PhD.; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 5, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2910 Filed 6–12–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### National Protection and Programs Directorate (NPPD), Center for Faith-Based Community Initiatives; Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** DHS, NPPD, Center for Faith-based Community Initiatives.

**ACTION:** Notice: 30-day notice and request for comments.

**SUMMARY:** The Department of Homeland Security (DHS), has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The information collection was previously published in the **Federal Register** on March 14, 2007 at 72 FR 11895–11896 allowing for a 60-day public comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by

respondents to respond) and cost, and includes the actual data collection instruments DHS will use.

**DATES:** Comments are encouraged and will be accepted until July 13, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/NPPD and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by calling Nathan Lesser, Desk Officer, Department of Homeland Security, Washington, DC 20528; and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

*Title:* Emergency Preparedness Workshop Questionnaires (DHS Forms 9006, 9008).

*OMB Number:* 1670–NEW.

*Affected Public:* For Profit and Not for Profit Businesses. Faith-based and Community organization representatives who attend Preparedness Workshops sponsored by DHS Center for Faith-based and Community Initiatives.

*Number of Respondents:* 500.

*Estimated Time per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 5,000.

*Frequency of Response:* On Occasion—once at the workshop and a follow-up six months later.

Presidential Executive Order 13397 directs the Center for Faith-based and Community Initiatives at DHS (CFBCI) to develop and coordinate Departmental outreach efforts to disseminate information more effectively to faith-based and other community organizations and the CFBCI's regional workshops are a piece of that outreach effort. The regional workshops are intended to increase the participation of FBCOs in federally-sponsored programs and activities, and thus qualify as a pilot program. Pursuant to the President's Management Agenda, DHS is required to perform outcomes based evaluations of these pilot programs. The data collected will be used to evaluate whether such the intended increase in participation by faith-based and community organizations has occurred. The information is to be used by the CFBCI to measure the effectiveness of its regional workshops, i.e., to determine whether the workshops result in greater participation by faith-based and community organizations in DHS-sponsored programs and activities. The CFBCI will share the date with the White House Office of Faith-based and Community Initiatives and the Office of Management Budget in connection with the evaluation of the workshop pilot program. This is a new collection.

**Charlie Church,**

*Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 07–2933 Filed 6–12–07; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF HOMELAND SECURITY

### National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (OIP); Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** DHS, NPPD, Office of Infrastructure Protection.

**ACTION:** Notice; 30-day notice and request for comments.

**SUMMARY:** The Department of Homeland Security (DHS), has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The information collection was previously published in the **Federal Register** on February 23, 2007, at 72 FR 8191 allowing for a 60-day public comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments DHS will use.

**DATES:** Comments are encouraged and will be accepted until July 13, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/NPPD and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by calling Nathan Lesser, Desk Officer, Department of Homeland Security, Washington, DC 20528; and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

*Title:* DHS Chemical Security Awareness Training Program (formerly the DHS Chemical Facility Security Training Program).

*OMB Number:* 1670–NEW.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 400,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 400,000.

*Frequency of Response:* Annually.

The Chemical and Nuclear Preparedness and Protection Division (CNPPD) of the Office of Infrastructure Protection within NPPD, DHS is providing an on-line voluntary training program to improve security in the chemical industry sector. Information is automatically collected in a computer database as result of individuals engaging in the training. Data collection includes the number of participants, type of facility, location of facility, percentage completion of the training so that the participation of the training program can be assessed. Explicit reporting or recordkeeping is not required. The training is designed for the general chemical facility employee. U.S. chemical industry direct employment is about 882,000 (*source:* American Chemistry Council, data for 2004); approximately half of employees are estimated as potential participants. Estimated duration of training is 60 minutes in the first year, and less if individuals do ''refreshers'' in succeeding years. Upon completion, a Certificate of Completion is generated at the trainee's computer work station, printed and optionally e-mailed to a facility supervisor. DHS will monitor program participation, success in training and basic distribution variables submitted upon registration, but not personal identification, and may analyze and report to Federal supervisors, Congress, and the public periodically.

**Charlie Church,**

*Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. E7–11424 Filed 6–12–07; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPENT

**[Docket No. FR–5146–N–03]**

### Notice of Proposed Information Collection: Comment Request; Record of Employee Interview

**AGENCY:** Office of Departmental Operations and Coordination, Office of Labor Relations, 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:* August 13, 2007.

**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, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Lillian_L._Deitzer@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 2102, Washington, DC 20410 or *Jade_M._Banks@hud.gov,* telephone (202) 402–5475 (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:* Record of Employee Interview.

*OMB Control Number, if applicable:* 2501–0009.

*Description of the need for the information and proposed use:* All Federal agencies administering programs subject to Davis-Bacon wage provisions are required to enforce Federal wage and reporting activities by Department of Labor (DOL) regulations (29 CFR part 5, Section 5.6 paragraphs (a)(2) and (a)(3), respectively.

HUD, state and local agencies administering HUD-assisted programs must enforce Federal wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include conducting interviews with laborers and mechanics employed on HUD-assisted projects concerning their employment on covered projects. The HUD–11 and HUD–11–SP (Spanish version) are used to assist in the conduct of the interviews and to record the information provided by the respondents. The forms may be supplemented with additional pages, as needed. Responses and the provision of supplemental information are voluntary on the part of respondents.

The HUD–11 and HUD–11–SP are available on-line through HUD's web site. Completed HUD–11 and/or HUD–11–SP forms must be retained by the HUD and local agencies to document the sufficiency of enforcement efforts.

*Agency form numbers, if applicable:* Forms HUD–11 and HUD–11–SP (Spanish version).

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

| Item | Number of respondents | Amount of time required (hours) | Total time required (in hrs.)/annum |
|---|---|---|---|
| Interviews | 20,000 | .25 | 5,000 |
| Recordkeeping | 20,000 | .16 | 3,200 |
| Total Annual Burden | | | 8,200 |

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 4, 2007.

**Edward L. Johnson,**

*Director, Office of Labor Relations.*

[FR Doc. E7–11334 Filed 6–12–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5117–N–45]**

### Notice of Submission of Proposed Information Collection to OMB; Doctoral Dissertation Research Grant Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been 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.

Doctoral students will receive grants to complete their dissertation on related to HUD subjects.

**DATES:** *Comments Due Date:* July 13, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0213) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports

Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at: *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting 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:* Doctoral Dissertation Research Grant Program.

*OMB Approval Number:* 2528–0213.

*Form Numbers:* SF–424, SF–424 Supplement, HUD–424–CB, SFLLL, HUD–27300, HUD–2880, HUD–2993, HUD–2944–A, HUD–96010, HUD–96011.

*Description of the Need For the Information and Its Proposed Use:* Doctoral students will receive grants to complete their dissertation on related to HUD subjects.

*Frequency of Submission:* On occasion, Semi-annually, Other Final Report.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 50 | 2.5 | | 14.24 | | 1780 |

*Total Estimated Burden Hours:* 1780.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2007.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer*

[FR Doc. E7–11336 Filed 6–12–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Record of Decision for the Bair Island Restoration and Management Plan and a Final Environmental Impact Statement/Environmental Impact Report, Don Edwards San Francisco Bay National Wildlife Refuge and the Bair Island State Ecological Reserve, San Mateo County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the decision and availability of the Record of Decision (ROD) for the Bair Island Restoration and Management Plan and Environmental Impact Statement (EIS) for the Don Edwards San Francisco Bay National Wildlife Refuge. A thorough analysis of the environmental, social, and economic considerations was completed and presented in the Final EIS. The Final EIS was released to the public and a Notice of Availability was published in the **Federal Register** on July 28, 2006. The ROD documents the Service's decision to adopt and implement Alternative 1, Tidal Marsh Restoration with Moderate Public Access for the Bair Island Restoration and Management Plan.

**DATES:** The ROD was signed by the Acting Manager, California/Nevada Operations, U.S. Fish and Wildlife Service on May 22, 2007.

**ADDRESSES:** A copy of the ROD may be obtained by writing to: Clyde Morris, Manager, Don Edwards San Francisco Bay National Wildlife Refuge, 9500 Thornton Avenue, Newark, California 94560 or by e-mailing *clyde_morris@fws.gov*. A copy of the Final ROD and EIS is available at the following Web site address: *http://southbayrestoration.org/bair.*

**FOR FURTHER INFORMATION CONTACT:** Clyde Morris, Refuge Manager, at the above street and e-mail address or via telephone at (510) 792–0222 extension 25, or by fax at (510) 792–5828.

**SUPPLEMENTARY INFORMATION:** Bair Island is a 3,000 acre former commercial salt pond complex on San Francisco Bay in Redwood City, California. The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game are preparing to restore and manage the 1,400 acres of Bair Island that are still contained within the former salt pond levees to tidal wetlands.

The Bair Island Complex is divided into three distinct areas separated by slough channels: Inner, Middle, and Outer Bair. Inner Bair Island is connected to the mainland with access from Whipple Avenue and U.S. Highway 101. Inner Bair Island is separated from Middle Bair by Smith Slough, which is separated from Outer Bair by Corkscrew Slough.

Historically, Bair Island was part of a large complex of tidal marshes and mud flats within the drainage of San Francisco Bay, Redwood Creek and Steinberger Slough. Bair Island was diked in the late 1800's and early 1900's for agricultural purposes. It was converted to commercial salt ponds in 1946 and remained in production until 1965. The lands were then drained and sold to a series of real estate development companies. A local referendum in the City of Redwood City halted development plans for Bair Island. The California Department of Fish and Game (CDFG) and the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) both acquired portions of Bair Island over time. The Peninsula Open Space Trust purchased the majority of the remaining portions of Bair Island in 1999 and their interests were acquired by these agencies.

Five alternatives for restoration and management of Bair Island and the consequences of implementing each alternative were described in detail in the Draft and Final EIS. The Draft EIS was distributed on August 27, 2004 and a public meeting to accept comments on the draft document was held on September 22, 2004. The Service received 31 comment letters from organizations or individuals. All substantive issues raised in these comments were addressed through

changes incorporated into the Final Bair Island Restoration and Management Plan and EIS and/or through responses to the comments, which are included in the Final EIS.

The ROD for the Bair Island Restoration and Management Plan has been prepared by the Service in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended. It documents the decision of the Service, based on the information contained in the Final Bair Island Restoration and Management Plan EIS and the entire Administrative Record. The Service adopted and plans to implement Alternative 1, Tidal Marsh Restoration with Moderate Public Access. This alternative has been identified by the Service as the alternative that would best achieve the goal of the restoration plan, the refuge purposes, and contribute toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. The selected alternative would restore Bair Island to a tidal salt marsh to provide habitat for endangered species and other native wildlife as well as to enhance the public's appreciation and awareness of the unique resources at Bair Island. Once restored, the site will assist with the preservation and recovery of both the California clapper rail and the salt marsh harvest mouse. These two species were listed by the Fish and Wildlife Service as endangered species on October 13, 1970.

The restoration of Bair Island would take place in phases. The first phase would be breaching of Outer Bair Island at two locations on Steinberger Slough near its entrance to San Francisco Bay. The second phase would be restoration of Inner and Middle Bair Island by breaching their former commercial salt pond levees after constructing a flow restrictor in Corkscrew Slough and reestablishing the historic meander of Smith Slough on Inner Bair Island. Dredge and/or fill material would raise the bottom elevation of Inner Bair Island to quicken the establishment of vegetated marsh. The third phase, which could take place during or after the first two phases, would be the construction of wildlife oriented public use facilities on Inner Bair Island and a portage with wildlife viewing platform on Outer Bair Island. Inner Bair Island improvements would include a new pedestrian bridge from the existing Refuge parking lot, a 1.8 mile public trail, and two wildlife viewing platforms with interpretive signage.

The Service considered the environmental and relevant concerns presented by agencies, organizations, and individuals and believes that implementing Alternative 1 is the best way to achieve the vision and goals of the restoration project. The selected alternative is also the most consistent with the purposes of the Refuge, the mission of the National Wildlife Refuge System, and the recovery actions proposed for the federally listed species found in the area. This alternative recognizes the need to restore habitat essential to the recovery of listed species as well as other tidal wetland dependent native species. The selected alterative also includes appropriate types and levels of recreational access for the public to experience and enjoy the resources being protected.

Dated: June 7, 2007.

**Ken McDermond,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. E7–11392 Filed 6–12–07; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–300–9131–PP]**

### Notice of Intent To Prepare a Programmatic Environmental Impact Statement for Leasing of Geothermal Resources

**AGENCIES:** Bureau of Land Management, Interior; and U.S. Forest Service, Agriculture.

**ACTION:** Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Leasing of Geothermal Resources.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), the Bureau of Land Management (BLM) and the United States Forest Service (USFS) will prepare a joint Programmatic Environmental Impact Statement (PEIS) to analyze the leasing of BLM- and USFS-administered lands with moderate to high potential for geothermal resources in eleven western states and Alaska.

**DATES:** This notice initiates the public scoping process for the PEIS. The BLM and the USFS will accept written comments on the scope of the PEIS postmarked by August 13, 2007, and electronic or faxed comments received by August 13, 2007. Public scoping meetings to obtain comments for the PEIS will be held in Anchorage, Alaska; Boise, Idaho; Denver, Colorado; Missoula, Montana; Phoenix, Arizona; Portland, Oregon; Reno, Nevada; Sacramento, California; Salt Lake City, Utah; and Santa Fe, New Mexico. Times and locations of the scoping meetings will be announced at least 15 days prior to the meetings in the local news media and on the project Web site: *http://www.blm.gov/Geothermal_EIS*. Public scoping will be open until August 13, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: geothermal_EIS@blm.gov*.
- *Fax:* 1–866–625–0707.
- *U.S. Mail:* Geothermal Programmatic EIS, c/o EMPS Inc., 182 Howard Street, Suite 110, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** For further information, including information on how to comment, you may contact Jack G. Peterson, Bureau of Land Management at 208–373–4048, *Jack_G_Peterson@blm.gov*, or Tracy Parker, Forest Service at 703–605–4796, *tparker03@fs.fed.us* or visit the Programmatic EIS Web site at *http://www.blm.gov/Geothermal_EIS*.

**SUPPLEMENTARY INFORMATION:** The BLM and the USFS will prepare a joint PEIS for geothermal leasing on BLM- and USFS-administered lands in the western United States (including Alaska) with moderate to high potential for geothermal resources. The U.S. Department of Energy plans to participate as a cooperating agency in view of its special expertise, and may adopt the PEIS to help it more efficiently meet its NEPA review obligations. The analysis area includes BLM- and USFS-administered lands in Alaska, Arizona, California, Colorado, Idaho, Nevada, New Mexico, Montana, Oregon, Utah, Washington, and Wyoming. This PEIS will not include congressionally withdrawn lands, Wilderness Areas, Wild and Scenic Rivers, or lands not administered by the BLM or the USFS. For more information related to areas in these states with potential for geothermal resources see the public Web site: *http://www.blm.gov/Geothermal_EIS*. This Web site will include links to many source documents including United States Geological Survey Circular 790 and the Western Governor's Association Geothermal Task Force Report. Source information will continue to be updated and expanded as a result of this scoping process. The PEIS will be prepared in accordance with applicable Council on Environmental Quality regulations at 40 CFR 1500–1508, and applicable BLM and USFS regulations.

Geothermal resources are indirectly used to generate electric power and directly used for many things such as heating buildings and aquaculture. Energy markets are driving increased demand for renewable geothermal energy. Advances in the engineering, technology and economics of geothermal exploration and improvements in the design and development of energy generation facilities have resulted in increased interest in areas with geothermal potential. Several recent Federal and state actions also are driving the increase in renewable energy activity, including geothermal energy leasing, exploration and development activity. These actions include the President's National Energy Policy; the Western Governors' Association Geothermal Task Force Report; and the Energy Policy Act of 2005.

The goal of the PEIS is to examine the potential impacts of geothermal leasing on certain lands administered by the BLM and the USFS. Completion of the PEIS will improve the efficiency and effectiveness of the geothermal leasing and application process on Federal lands. The analysis in the PEIS will serve the following two purposes.

(1) Analyze the impacts of leasing in areas that are determined through scoping to have reasonable near-term exploration/development potential for geothermal resources, including areas for which leasing applications have not yet been filed. The PEIS will thereby assist the BLM in determining how best to amend, as appropriate, its land use plans for these areas, by identifying the potential for geothermal development in the areas and determining the areas where geothermal development will be considered as an allowable use. The PEIS will similarly address USFS-managed lands that have potential for geothermal resources and provide the basis for future geothermal leasing availability analysis and decisions.

(2) Enable the BLM to reduce the backlog of lease applications that were pending on BLM- and USFS-administered lands as of January 1, 2005 by at least 90 percent as required by section 225(b)(3) of the Energy Policy Act of 2005. This Act gives the BLM until August 8, 2010, to achieve this goal. As of January 1, 2005, there were nearly 100 applications for geothermal leases pending on BLM and USFS lands. The PEIS will include the necessary site specific analysis to facilitate processing of these pending lease applications by deciding whether geothermal leasing is appropriate and under what stipulations they may be leased.

Comments are being solicited so as to determine: (1) The scope of this analysis, (2) significant issues or concerns related to the proposed actions, and (3) alternatives to the proposed actions.

The BLM will provide further information at the scoping meetings regarding the locations of, and the planning areas and forests that may be affected by, the actively pending applications. The purpose of the public scoping process is to identify issues that should be addressed in the environmental analysis and the scope of the alternatives. You may submit comments in writing at any public scoping meeting, or you may submit them using one of the methods listed in the **ADDRESSES** section above. 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.

**Douglas Burger,**

*Acting Assistant Director, Minerals, Realty and Resource Protection, Bureau of Land Management.*

**Frederick Norbury,**

*Associate Deputy Chief for National Forest System, U.S. Forest Service.*

[FR Doc. 07–2921 Filed 6–12–07; 8:45 am]

**BILLING CODE 4310–84–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID 100 1220MA 214A: DBG071008]**

### Notice of Public Meeting: Joint Recreation Resource Advisory Council Subcommittee to the Boise and Twin Falls Districts, Bureau of Land Management, U.S. Department of the Interior

**AGENCY:** Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise and Twin Falls District Recreation Resource Advisory Council (Rec-RAC) Subcommittee, will hold a meeting as indicated below.

**DATES:** The meeting will be held July 12, 2007, beginning at 9 a.m. and adjourning at 12 noon. The meeting will be held at the Oregon Trail Interpretative Center, West Madison Street, Glenns Ferry, Idaho. Public comment periods will be held before the conclusion of the meeting.

**FOR FURTHER INFORMATION CONTACT:** MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393, or Heather Tiel, Public Affairs Officer, BLM Twin Falls District, 2536 Kimberly Rd., Twin Falls, ID 83301, (208) 735–2076.

**SUPPLEMENTARY INFORMATION:** In accordance with section 4 of the Federal Lands Recreation Enhancement Act of 2005, a Subcommittee has been established to provide advise to the Secretary of the Interior, through the BLM, in the form of recommendations that relate to public concerns regarding the implementation, elimination or expansion of an amenity recreation fee; or recreation fee program on public lands under the jurisdiction of the U.S. Forest Service and the BLM in both the Boise and Twin Falls Districts located in southern Idaho. The Resource Advisory Councils in each District have formally approved the members of the new Joint Rec-RAC Subcommittee, including any non-RAC member. Items on the agenda include introductions; review and discussion of roles and responsibilities of the subcommittee members as well as the Coordinators from each of the two agencies. A draft charter will be presented for discussion review and for approval at the Joint RAC meeting of the Boise and Twin Falls RACs to be held in the fall of 2007. Information about the proposed fee changes at sites under the jurisdiction of the two agencies will be presented to enable subcommittee member's time for review prior to the next meeting when they will be asked to approve fee changes. Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Subcommittee. Each formal subcommittee meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinators as provided above. Expedited publication

is requested to give the public adequate notice.

Dated: June 7, 2007.

**Jerry L. Taylor,**

*District Manager.*

[FR Doc. E7–11391 Filed 6–12–07; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–050–1430–FR; MTM 95482]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification and Conveyance; Beaverhead County, MT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance to Beaverhead County under the provisions of the Recreation and Public Purposes Act, two parcels of public lands located near Dillon, in Beaverhead County, Montana. One of the parcels has been leased under the Recreation and Public Purposes Act to the Dillon Rifle and Pistol Club for use as a shooting range since 1965. Beaverhead County intends to further develop and expand the existing shooting range facility.

**DATES:** For a period until July 30, 2007, interested parties may submit comments to the Field Manager, BLM Dillon Field Office at the address below.

**ADDRESSES:** Bureau of Land Management, Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725.

**FOR FURTHER INFORMATION CONTACT:** Angela Brown, Realty Specialist, Dillon Field Office, (406) 683–8045 or via e-mail at *angela_brown@mt.blm.gov.*

**SUPPLEMENTARY INFORMATION:** The following described public land in Beaverhead County, Montana has been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act as amended (43 U.S.C. 869 *et seq.*) and is hereby classified accordingly:

**Principal Meridian, Montana**

T. 7 S., R. 9 W.,
Sec. 7, lots 1, 2 and 3.
T. 7 S., R. 10 W.,
Sec. 12, E½NE¼.

The area described contains 169.81 acres in Beaverhead County.

The parcel of land described in section 7 (lots 1, 2 and 3 encompassing 89.81 acres) was previously classified for lease under the R&PP Act, for shooting range purposes. The purpose of this notice is to classify the entire 169.81 acres of the land described above as suitable for conveyance under the R&PP Act.

Beaverhead County has filed an R&PP application and plan of development to patent the public land (the previously leased land and additional acreage) in which it proposes to construct, operate, maintain, and further develop the shooting range. The additional acreage will serve as a safety buffer zone and expansion of the shooting range. The land is not needed for Federal purposes. Patent of the land conforms to the Dillon Resource Management Plan and would be in the public interest.

The patent document, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior and would contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the lands under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. All valid, existing rights of record, including those documented on the official public land records at the time of patent issuance.

4. Those rights for electric power line purposes granted to Vigilante Electric Cooperative, its successors and assigns, by right-of-way number MTM 60935, pursuant to the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1761) as to lot 3, section 7, T. 7 S., R. 9 W.

5. Those rights for a water pipeline to the City of Dillon located in lot 3, section 7, T. 7 S., R. 9 W. to transport water from Kelly Reservoir to a storage facility near Dillon for fire suppression.

6. No portion of the land patented shall revert back to the United States under any circumstance. In addition, the patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR Part 302) and indemnify the United States against any legal liability or future costs that may arise out of any violations of such laws.

7. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670) notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, or had any hazardous substances been disposed of or release on the subject property.

Additional detailed information concerning the proposed action, including but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM, Dillon Field Office, 1005 Selway Drive, Dillon, Montana.

Upon publication of this notice in the **Federal Register**, the above described public lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for patent under the R&PP Act and leasing under the mineral leasing laws.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for conveyance. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

*Patent Comments:* Interested parties may submit comments regarding the patent and the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

*Confidentiality of Comments:* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the Dillon Field Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification of the land described in this notice will become effective on August 13, 2007. The land will not be offered for patent

until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

**Tim Bozorth,**

*Field Manager.*

[FR Doc. E7–11421 Filed 6–12–07; 8:45 am]

**BILLING CODE 4310–$$–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–922 (Review)]**

### Automotive Replacement Glass Windshields From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of five-year review.

**SUMMARY:** The subject five-year review was initiated in March 2007 to determine whether revocation of the antidumping duty order on automotive replacement glass windshields from China would be likely to lead to continuation or recurrence of material injury. On June 5, 2007, the Department of Commerce published notice that it was revoking the order effective April 4, 2007, ''{b}ecause the domestic interested parties did not participate in the sunset review.'' (72 FR 31052). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

**DATES:** *Effective Date:* April 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**Authority:** This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: June 7, 2007

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–11390 Filed 6–12–07; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–543]**

### In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets; Commission Determination on the Issues of Remedy, the Public Interest, and Bonding; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation directed against certain products of respondent Qualcomm Incorporated of San Diego, California (''Qualcomm'') and certain downstream products that contain them. The Commission has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:** On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Broadcom Corporation of Irvine, California, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of certain claims of U.S. Patent Nos. 6,374,311; 6,714,983 (''the '983 patent''); 5,682,379 (''the '379 patent''); 6,359,872 (''the '872 patent''); and 6,583,675. 70 FR 35707 (June 21, 2005). The complainant named Qualcomm Incorporated of San Diego, California (''Qualcomm'') as the only respondent. The '379 and '872 patents were terminated from this investigation.

On October 19, 2006, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337 and a Recommended Determination on Remedy and Bond (collectively, ''ID''), finding a violation of section 337. On December 8, 2006, the Commission issued a notice of its decision to review and modify in part the ALJ's final ID. The modification made by the Commission did not affect the finding of violation. The Commission also requested the parties to the investigation, interested government agencies, and any other interested persons to file written submissions on the issues of remedy, the public interest, and bonding.

On January 25, 2007, respondent Qualcomm moved, inter alia, for oral argument and hearing on the issues of remedy and the public interest. On March 21–22, 2007, the Commission held a public hearing on the issues of remedy and the public interest. Subsequently, the Commission extended the target date for completion of this investigation to June 7, 2007.

Having reviewed the record in this investigation, including the written submissions of the parties and the testimony at the Commission public hearing, the Commission has made the following determinations on the issues of remedy, the public interest, and bonding.

The Commission has determined that the appropriate form of relief is, *inter alia,* a limited exclusion order prohibiting the unlicensed entry of baseband processor chips or chipsets, including chips or chipsets incorporated into circuit board modules and carriers, manufactured abroad by or on behalf of Qualcomm or any of its affiliated companies, parents, subsidiaries, contractors, or other related business entities, or their successors or assigns, that are programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of the '983 patent, as well as handheld wireless communications devices, including cellular telephone handsets and PDAs, containing Qualcomm baseband processor chips or chipsets that are

programmed to enable the power saving features covered by claims 1, 4, 8, 9, or 11 of the '983 patent. The Commission limited exclusion order does not apply to computer data cards. Also exempted from the Commission limited exclusion order are handheld wireless communications devices that are of the same models as handheld wireless communications devices that were being imported into the United States for sale to the general public on or before the date of the Commission limited exclusion order. The exempted models must be identifiable by specific and verifiable model numbers, denoting model-specific product specifications, features, and functions. Importers will be able to certify to the Bureau of Customs and Border Protection (''Customs'') that their products are exempted. This exemption will not apply to handheld wireless communications devices that differ in terms of model number, product specifications, features, or functions from wireless handheld communications devices that were being imported into the United States for sale to the general public on or before the date of the Commission limited exclusion order.

To assist enforcement of the exclusion order, and to aid importers seeking a good faith basis on which to certify that products are exempted as pre-existing models, we encourage importers and parties that sell downstream devices to members of the general public to supply Customs, as soon as practicable, information and supporting documentation as to those handset models that contain the infringing chips and that were being imported for sale to the general public on or before the date of the limited exclusion order. That submission should include a complete list of the product specifications, features, and functions associated with each exempted model number. Imports of prototypes, or downstream devices for use in testing, for limited-scale distribution for marketing or other purposes, or any purpose other than widespread sales to end use consumers, do not constitute imports for sale to the general public.

The Commission has also determined to issue a cease and desist order that prevents Qualcomm from engaging in certain activities in the United States related to the infringing chips.

The Commission found that, while exclusion of all downstream products could adversely affect the public interest as enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)), the exemption for previously imported models sufficiently ameliorates this impact such that the limited exclusion and cease and desist orders should be issued. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period (19 U.S.C. § *1337(j)) shall be in the amount of one hundred (100) percent of entered value for infringing chips or chipsets imported separately, or five (5) percent of entered value per handheld wireless communications device containing infringing chips or chipsets. Pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337(j), from the day after this Order is received by the United States Trade Representative (70 FR 43251 (July 21, 2005)), this bond will be in effect until such time as the United States Trade Representative notifies the Commission that she approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

Vice Chairman Shara L. Aranoff, Commissioner Deanna Tanner Okun, Commissioner Charlotte R. Lane, and Commissioner Irving A. Williamson voted in favor of the remedial orders. They provide their supporting analysis in two separate opinions. Chairman Daniel R. Pearson and Commissioner Dean A. Pinkert dissented and provide additional and dissenting views.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: June 7, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–11389 Filed 6–12–07; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Wage and Hour Division

### Special Industry Committee for All Industries in American Samoa; Cancellation

I hereby discharge the Industry Committee that I appointed and convened on May 10, 2007, (72 FR 27337) because of provisions contained in section 8103 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (''the Act'') that repeal current sections 5, 6(a)(3), and 8 of the Fair Labor Standards Act, as amended, (FLSA) (29 U.S.C. 205, 206(a)(3), and 208), effective July 24, 2007. The Act sets forth statutory requirements providing that the minimum wage applicable to American Samoa under the FLSA shall be—

(1) The applicable wage rate in effect for each industry and classification under 29 CFR part 697 on May 25, 2007;

(2) Increased by $0.50 an hour, beginning on July 24, 2007; and

(3) Increased by $0.50 an hour (or such lesser amount as may be necessary to equal the minimum wage under FLSA section 6(a)(1), beginning on May 25, 2008, and each year thereafter until the minimum wage applicable to American Samoa is equal to the general minimum wage set forth in FLSA section 6(a)(1) (29 U.S.C. 206(a)(1)).

In addition, the repeal of the FLSA provisions mentioned above removes the Department of Labor's authority to convene American Samoa Industry Committees.

Signed in Washington, DC, this 8th day of June, 2007.

**Elaine L. Chao,**

*Secretary of Labor.*

[FR Doc. E7–11520 Filed 6–12–07; 8:45 am]

BILLING CODE 4510–27–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (07–047)]**

### NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

**DATES:** Wednesday, June 20, 2007, 8:30 a.m. to 5 p.m. and Thursday, June 21, 2007, 8:30 a.m. to 4 p.m. Eastern Daylight Time.

**ADDRESSES:** Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452,

fax (202) 358–4118, or *mnorris@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Astrophysics Division Overview and Program Status.
- Assessment of Astrophysics Fiscal Year 2007 Science Accomplishments.
- Astrophysics Science Planning Activities (NASA Science Plan 2009 and Decadal Survey Activities).
- Status of Hubble Space Telescope Program.
- Status of Stratospheric Observatory for Infrared Astronomy Program.
- Status of James Webb Space Telescope Program.
- Review of Astrophysics Science at the Moon Report and Associated NAC Recommendations.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a visitor's register.

Dated: June 7, 2007.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration*

[FR Doc. E7–11330 Filed 6–12–07; 8:45 am]

**BILLING CODE 7510–13–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 six 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):

*Opera* (application review): July 10, 2007 in Room 716. A portion of this meeting, from 12 p.m. to 1 p.m., will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 12 p.m. and from 1 p.m. to 6:15 p.m., will be closed.

*Music* (application review): July 16–18, 2007 in Room 714. This meeting, from 9 a.m. to 6:30 p.m. on July 16th and 17th, and from 9 a.m. to 4:15 p.m. on July 18th, will be closed.

*Theater* (application review): July 17–20, 2007 in Room 730. A portion of this meeting, from 11 a.m. to 12 p.m. on July 20th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on July 17th–19th, and from 9 a.m. to 11 a.m. and 12 p.m. to 3 p.m. on July 20th, will be closed.

*Opera* (application review): July 19–20, 2007 in Room 716. A portion of this meeting, from 12 p.m. to 1 p.m. on July 20th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on July 19th and from 9 a.m. to 12 p.m. and from 1 p.m. to 6:15 p.m. on July 20th, will be closed.

*Visual Arts* (application review): July 24–27, 2007 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on July 24th–26th and from 9 a.m. to 1 p.m. on July 27th, will be closed.

*Presenting* (application review): July 25–27, 2007 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on July 25th and 26th, and from 9 a.m. to 2:30 p.m. on July 27th, 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 21, 2007, 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: June 8, 2007.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E7–11378 Filed 6–12–07; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 13, 2007. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

**1. Applicant, Permit Application No. 2008–002**

Ross D. E. MacPhee, Department of Mammalogy, American Museum of Natural History, Central Park West @ 79th Street, New York, NY 10024.

*Activity for Which Permit Is Requested*

Enter an Antarctic Specially Protected Area (ASPA). The applicant plans to enter the Byers Peninsula protected area (ASPA #126) to search for late Mesozoic vertebrate fossils (dinosaurs, mosasaurs, plesuisaurs, birds and mammals).

Collection of such items, in addition to those known from the east side of the Antarctic Peninsula, would be major contributions to the Antarctic record of vertebrate evolution. Rock samples would also be collected for stable isotopes of oxygen, carbon, and hydrogen to shed light on late Mesozoic climatic conditions in the area of the South Shetlands and to improve correlations with other areas.

*Location*

Byers Peninsula (ASPA #126), Livingston Island.

*Dates*

November 24, 2007 to December 31, 2007.

**2. Applicant, Permit Application No. 2008–003**

Anthony Powell, 32742 Alipaz #94, San Juan Capistrano, CA 92675.

*Activity for Which Permit Is Requested*

Enter an Antarctic Specially Protected Area (ASPA). The applicant proposes to enter Cape Evans (ASPA #155) for the purpose of photography. The applicant is a participant in the U.S. Antarctic Program's Artists and Writers Program who will film an overall ''Year on Ice'' time-lapse photography project, which will document the Antarctic environment, landscapes, living conditions, and researchers at work through an Antarctic year. Photography of the historic hut at Cape Evans would be part of this project. Depending on the weather patterns at the time, it may also give an indication of erosion patterns affecting the site, which could be of great use to conservators.

*Location*

Historic Hut at Cape Evans (ASPA #155).

*Dates*

November 1, 2007 to December 10, 2007.

**3. Applicant, Permit Application No. 2008–004**

Arthur L. DeVries, Department of Animal Biology, 524 Burrill Hall, University of Illinois, Urbana, IL 61801.

*Activity for Which Permit Is Requested*

Introduce non-indigenous species into Antarctica. The applicant proposes to use 15 New Zealand black cod (*Notothenia angustata*) in experiments to determine whether antifreeze glycoproteins are absorbed from the intestinal tract into the blood stream. (These fish are related to the Trematomus fishes in Antarctica but do not produce antifreeze glycoproteins that would enable them to survive in Antarctic waters.) The Black cod will be fed nototheniid fish muscle supplemented with antifreeze glycoproteins. Periodic blood samples will be taken to ascertain whether antifreeze glycoproteins are being transported from the intestinal fluid into the bloodstream. Upon completion of the experiments the fish will be sacrificed, their tissues and blood collected, and they will be preserved in formalin and sent to the fish collection at the University of Illinois.

*Location*

McMurdo Station seawater aquarium.

*Dates*

September 25, 2007 to January 31, 2008.

**4. Applicant, Permit Application No. 2008–005**

Rachael Morgan-Kiss, Delaware Biotechnology Institute, 15 Innovation Way, Newark, DE 19711.

*Activity for Which Permit Is Requested*

Introduce non-indigenous species into Antarctica. The applicant proposes to bring 10g cell pellets of green algae (*Chlamydomonas raudensis*), originally collected from Antarctica, for use in experiments to link their understanding of physiological responses in this organism in a laboratory setting with photosynthetic adaptation during the transition between summer and winter in its natural environment. The algal pellets will be used to grow algae cultures which will be transferred to dialysis tubing at the Lake Bonney laboratory. The dialysis chambers will be suspended in the Lake Bonney water column. Once the samples are collected they will be extracted at the Bonney Lake Lab or at Crary Lab at McMurdo Station, resulting in the death of all cells. The cells will be processed in a variety of ways for different analyses back in the U.S. Any remaining viable cultures will be autoclaved to ensure 100% mortality of unused cultures.

*Location*

Lake Bonney field camp, Taylor Valley, and Crary Laboratory at McMurdo Station.

*Dates*

February 25, 2008 to April 10, 2008.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E7–11341 Filed 6–12–07; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–445 and 50–446]**

## TXU Generation Company LP Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Indirect Transfer of Control of Facility Operating Licenses and Conforming License Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Facility Operating Licenses numbered NPF–87 and NPF–89, for the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES) currently held by TXU Generation Company LP, as owner and licensed operator of CPSES. The Commission is also considering amending the licenses for administrative purposes to reflect a proposed name change.

According to an application for approval filed by TXU Generation Company LP, acting on behalf of itself and Texas Energy Future Holdings Limited Partnership (Texas Energy LP), the applicants are requesting consent to indirect transfer of control of TXU Generation Company LP's operating licences for CPSES, in connection with the acquisition of TXU Corporation by Texas Energy LP. TXU Corporation is the indirect owner of TXU Generation Company LP.

No physical changes to the CPSES facility or operational changes are being proposed in the application.

In connection with the indirect change of control, and the plans of Texas Energy LP to clarify the distinctions between TXU Corporation's state-regulated transmission and distribution business and its other businesses, TXU Generation Company LP will be converted to a limited liability company and renamed Luminant Generation Company LLC. Therefore, TXU Generation Company LP has requested proposed conforming amendments to Facility Operating License Nos. NPF–87 and NPF–89 that would replace references to TXU Generation Company LP in the license with references to Luminant Generation Company LLC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The

Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed acquisition will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for TXU Generation Company LP, Mr. Timothy Matthews at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004 (tel: 202–739–5527, fax: 202–793–3001, e-mail: *tmatthews@morganlewis.com*), and counsel for Texas Energy LP, Dr. Richard A. Meserve at Covington & Burling LLP, 1201 Pennsylvania Ave. NW., Washington, DC 20004 (tel: 202–662–5304, fax: 202–662–5304, fax: 202–778–5304, e-mail: *rmeserve@cov.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated April 18, 2007, 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. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 7th day of June, 2007.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 07–2929 Filed 6–12–07; 8:45 am]

**BILLING CODE 7590–01–P**

## PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

### Senior Executive Service Performance Review Board Membership

**AGENCY:** Office of Inspector General, Department of the Interior.

**ACTION:** Notice; corrections.

**SUMMARY:** The Office of Inspector General, Department of the Interior, published a document in the **Federal Register** of December 5, 2006, concerning the membership of the Senior Executive Service Performance Review Board for the President's Council on Integrity and Efficiency. The document should also have included the Executive Council on Integrity and Efficiency.

**FOR FURTHER INFORMATION CONTACT:** Eric M. Lippold, 703–487–5371 Corrections.

In the **Federal Register** of December 5, 2006, in FR Doc. E6–20548, on page 70570, in the third column, correct the ''Heading'' caption to read:

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY.

In the **Federal Register** of December 5, 2006, in FR Doc. E6–20548, on page 70570, in the third column, correct the ''Summary'' caption to read:

**SUMMARY:** This notice sets forth the names and titles of the current membership of the President's Council on Integrity and Efficiency (PCIE) and Executive Council on Integrity and Efficiency (ECIE) Performance Review Board as of October 2, 2006.

In the **Federal Register** of December 5, 2006, in FR Doc. E6–20548, on page 70570, in the third column, correct the ''Supplementary Information'' caption to read:

**I. Background**

The Inspector General Act of 1978, as amended, created the Offices of Inspectors

General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. Executive Order 12301 (March 26, 1981) established the President's Council on Integrity and Efficiency (PCIE). On May 11, 1992, Executive Order 12805 reaffirmed the PCIE and also established the Executive Council on Integrity and Efficiency (ECIE). Both councils are interagency committees chaired by the Office of Management and Budget's Deputy Director for Management. Their mission is to coordinate and enhance governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs. The PCIE is comprised principally of the 29 Presidential appointed Inspectors General (IGs), ECIE members include the 32 Inspectors General appointed by their respective agency heads.

**II. PCIE/ECIE Performance Review Board**

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the PCIE/ECIE Performance Review Board, as of October 2, 2006, are as follows:

**Renee M. Pettis,**

*Assistant Inspector General for Management.*

[FR Doc. E7–11377 Filed 6–12–07; 8:45 am]

**BILLING CODE 4310–10–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55875; File No. SR–Amex–2006–170]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto, Relating to Procedures for At-Risk Cross Transactions

June 7, 2007.

### I. Introduction

On February 17, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new crossing procedure, the ''at-risk cross,'' as an alternative to the Exchange's existing facilitation cross procedure. On November 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change, and on December 1, 2006, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on January 17, 2007.[3] On March 28, 2007, the Exchange filed Amendment No. 3 to the proposed rule change, and on May 3, 2007, the Exchange filed Amendment No. 4 to the proposed rule change. Amendment Nos. 3 and 4 to the proposed rule change were published for comment in the **Federal Register** on May 14, 2007 for a 15-day comment period.[4] The comment period ended on May 29, 2007. The Commission received no comments on the proposal. This order grants accelerated approval to the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4.

### II. Description of the Proposal

The Exchange proposes to adopt an ''at-risk cross'' procedure for equity options by adding Commentary .03 to Amex Rule 950–ANTE(d). This new ''at risk cross'' procedure would supplement the existing facilitation cross procedure set forth in Commentary .02 to Amex Rule 950–ANTE(d)[5] The proposed at-risk crossing procedure would permit a floor broker, after satisfying all public customer orders, to execute a cross that is at-risk to the market on behalf of a member organization trading against its own customer's order between the quoted market, once priority has been established.

The at-risk cross transaction procedure would be available for use only by floor brokers attempting to cross an order of a public customer against an order from the same member organization, and the minimum eligible order size for the at-risk cross transaction would be 50 contracts. A floor broker attempting to execute an order as an at-risk cross would be required first to request bids and offers from the trading crowd for all components of the public customer order.[6] After the trading crowd has provided a quote, the floor broker would then represent the customer order to the trading crowd, indicating that it is a customer order and providing the order's size, side of the market, and a price, giving the customer the opportunity for price improvement.

After the trading crowd has provided a quote in response to the customer order, the proposed rule would permit the floor broker to improve the trading crowd's quote on behalf of the member organization and thereby establish priority over the trading crowd at this new price.[7] The bid or offer on behalf of the member organization would be required to be one minimum price variation (''MPV'') away from the customer order. The floor broker could then attempt to consummate a cross transaction with the customer at that price. However, the cross transaction would be ''at risk'' to the market, because the trading crowd would still have the ability to break up the cross before its consummation, either by trading with the customer order at the customer's price or trading with the member organization's order at its attempted cross price.

Under the Exchange's existing facilitation crossing procedures, a member firm seeking to facilitate its own public customer's order is entitled to participate in the firm's proprietary account as the contra-side of that order up to 40 percent of the remaining contracts (the ''Member Firm Guarantee''), provided that the order trades at a price that matches or improves the market, after public customer orders on the specialist's book or customer orders represented by a floor broker in the crowd have been filled.[8] Under the proposed at-risk crossing procedure, the floor broker on behalf of the member firm effectively would relinquish the Member Firm Guarantee in an attempt to cross the entire order.

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55068 (January 9, 2007), 72 FR 2044 (''Notice'').

[4] *See* Securities Exchange Act Release No. 55719 (May 3, 2007), 72 FR 27155 (''Notice of Amendment Nos. 3 and 4'').

[5] Commentary .02(c) to Amex Rule 950–ANTE(d) sets forth the facilitation cross procedures for options trading generally. Commentary .02(d) to Amex Rule 950–ANTE(d) sets forth conditions and procedures by which a member firm facilitating its own public customer's order is entitled to participate from its proprietary account as the contra-side of that order to the extent of 40 percent of the contracts remaining after public customers have been satisfied, provided the order trades at or between the quoted market.

[6] The floor broker would be required to disclose on the order ticket for the public customer order all the terms of the order, including, if applicable, any contingency involving other options, underlying securities, or related securities.

[7] At this point, the floor broker may alternatively decide to follow the procedures of Commentary .02(d) to Amex Rule 950–ANTE(d).

[8] *See* Commentary .02(d)(1) to Amex Rule 950–ANTE(d).

and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[10]

The Commission believes that the proposed at-risk cross procedure is consistent with the Act in that it is intended to provide public customer orders with additional opportunity for price improvement without affording unfair advantage to the member firms that submit such customer orders and seek to trade against them. Under the proposal, a floor broker may attempt to cross a public customer order entirely against an order from the member firm from which it originated only after the floor broker, on behalf of the member firm, improves the price quoted to the customer by the trading crowd, and thereafter affords the crowd an opportunity to break up the cross by improving the price still one MPV better. Moreover, the trading crowd alternatively could break up the attempted cross by trading with the member firm's order at the member firm's price.

In addition, the Commission believes that the at-risk cross procedure may encourage the members of the trading crowd to put forth their best bids or offers when the customer order is first presented to the crowd. This is because the floor broker would be able to establish priority by improving the trading crowd's quoted market, and then would be permitted to cross the entire order at the improved price. Accordingly, the Commission believes that members of the trading crowd will have a greater incentive to make larger, tighter markets in response to customer orders, thereby improving the auction market.

The Commission notes further that if a public customer order either on the book or represented in the trading crowd has priority over the at-risk cross, the member firm would be permitted to participate only in those contracts remaining after the public customer's order has been filled.[11] In addition, if there is a public customer order on the book or represented in the trading crowd on the same side of the market as, and priced at or better than, the public customer order that is part of the at-risk cross, the public customer order on the book or represented in the trading crowd would have priority.[12]

The Commission also finds that the Exchange's at-risk cross proposal is consistent with Section 11(a) under the Act.[13] The Commission notes that orders relying on the exemption provided by Section 11(a)(1)(G) of the Act (for ''G Orders'') [14] from the prohibitions of Section 11(a) may be executed as an at-risk cross only if the requirements of Section 11(a)(1)(G) are met. Specifically, the Exchange has noted that if a G Order is entered by a floor broker as part of an at-risk cross transaction, the G Order will not be permitted to execute ahead of any non-member order on the book.[15]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice of Amendment Nos. 3 and 4 in the **Federal Register**. The Commission notes that the proposal, as modified by Amendment Nos. 1 and 2, was published for a full notice and comment period,[16] and that the Commission received no comment letters on the proposal. Further, Amendment Nos. 3 and 4 were published for a 15-day comment period, and the Commission received no comment letters. Amendment No. 3 made technical and clarifying changes and confirmed previous verbal representations made by the Exchange. The Commission believes that these clarifications serve to enhance the proposal and raise no new or novel issues. Amendment No. 4 proposed to permit the at-risk crossing procedure to apply to options classes that are part of the options penny pilot program (''penny pilot options'').[17] The Commission believes that orders in the penny pilot options should be afforded the same potential for price improvement through the at-risk cross procedure as other options classes, and that applying the at-risk cross procedure to penny pilot options raises no additional significant regulatory issues that were not considered in the original proposal. Therefore, the Commission believes that no purpose is served by delaying approval of the proposal, as amended. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] to approve the proposal, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–2006–17), as modified by Amendment Nos. 1, 2, 3, and 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–11367 Filed 6–12–07; 8:45 am]

**BILLING CODE 8010–01–P**

[9] 15 U.S.C. 78f(b)(5).

[10] 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).

[11] *See* Commentary .03 to Amex Rule 950–ANTE(d) and Notice, *supra* note 3, at n.7. *See also* Notice of Amendment Nos. 3 and 4, *supra* note 4.

[12] *See* Notice of Amendment Nos. 3 and 4, *supra* note 4.

[13] 15 U.S.C. 78k(a).

[14] 15 U.S.C. 78k(a)(1)(G).

[15] *See* Notice, *supra* note 3.

[16] *See id.*

[17] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106). Amendment No. 4 also made non-substantive rule text changes and showed the text of the final proposal as marked against the current text of Amex Rule 950–ANTE(d).

[18] 15 U.S.C. 78s(b)(2).

[19] 5 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55874; File No. SR–CBOE–2006–101]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Amend CBOE's Rules To Reflect the Migration of Its TPF Technology Platform Over to the Existing CBOEdirect Technology Platform

June 7, 2007.

## I. Introduction

On November 30, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 introduce a third trading platform into its existing CBOEdirect system, ''Hybrid 3.0.'' The Exchange submitted Amendment No. 1 to the proposed rule change on February 15, 2007. The Exchange submitted Amendment No. 2

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to the proposed rule change on April 13, 2007.[3] The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on May 3, 2007.[4] The Commission did not receive any comments regarding the proposal. This order approves the proposed rule change as modified by Amendment Nos. 1 and 2.

## II. Description of the Proposal

In 2003, CBOE introduced the Hybrid Trading System (''Hybrid'' or ''Hybrid System''), an electronic trading platform integrated with CBOE's floor-based open-outcry auction market.[5] Under CBOE's existing rules, the Hybrid System currently supports two trading platforms: (i) The original Hybrid Trading System, which is a trading platform that allows individual Market-Makers to submit electronic quotes in their appointed classes; and (ii) Hybrid 2.0, which is an enhanced trading platform that allows remote quoting by authorized categories of Exchange members. These two platforms operate on a technology system that is referred to as the CBOEdirect trade engine. In addition to these two platforms, prior to 2003 and through the present, CBOE has also utilized its TPF mainframe system to support trading in its ''non-Hybrid'' classes.[6] Therefore, options classes currently may be authorized by the Exchange to trade on the non-Hybrid, original Hybrid Trading System or Hybrid 2.0 platforms.

CBOE has determined to migrate the trading programs operating on its TPF mainframe system to the CBOEdirect trade engine. To accommodate this changeover, CBOE has proposed to amend its Hybrid rules to introduce a third trading platform into its existing CBOEdirect system, called ''Hybrid 3.0,'' which incorporates certain aspects of both the Hybrid Trading System and non-Hybrid platforms. The more significant aspects of the proposal are outlined below.[7]

### *A. Quoting*

As proposed, the Hybrid 3.0 platform will allow a single electronic quote, which will represent the aggregate Market Maker quoting interest in each option series for the trading crowd (''Hybrid 3.0 crowd quote''). This single quote will be generated from either an appointed Designated Primary Market Maker (''DPM'') or Lead Market Maker (''LMM''). In this way, Hybrid 3.0 will operate in a manner similar to the existing non-Hybrid platform where an appointed DPM or LMM may generate an automated quote for the trading crowd.[8]

In Hybrid 3.0, members of the trading crowd will be able to submit manual quotes. Specifically, members of the trading crowd will be able to verbalize manual quotes to be input into Exchange systems by quote reporters for dissemination to the Options Price Reporting Authority (''OPRA'').[9] The manual quote disseminated in Hybrid 3.0 classes will be separate and additional to the Hybrid 3.0 crowd quote. If market participants (which include in-crowd market makers) are eligible to submit orders for entry into the electronic book, then the appropriate Procedure Committee may determine to disable manual quotes.[10]

### *B. Order Eligibility for Entry into Electronic Book*

In Hybrid 3.0, public customer orders are automatically eligible for electronic book entry.[11] Moreover, in Hybrid 3.0, the appropriate Procedure Committee can determine, on a class by class basis, to allow certain other types of orders into the electronic book, including orders of market participants and broker-dealers.[12] These eligibility rules are the same as the existing rules for other Hybrid classes except that, with respect to other Hybrid classes, market participants are eligible to submit orders for entry into the electronic book without the appropriate Procedure Committee's approval. The proposed electronic book eligibility rules for Hybrid 3.0 are consistent with current practices in CBOE's non-Hybrid classes.[13]

### *C. Automatic Execution of Incoming Orders*

Hybrid 3.0 proposes to permit automatic execution of non-broker-dealer public customer orders. In addition, the appropriate Procedure Committee may determine, on a class by class basis, to allow orders of broker-dealers that are not market-makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Act (''non-Market-Maker or non-Specialist broker-dealers'') to be eligible for automatic execution.[14]

For Hybrid 3.0 classes, incoming orders that are eligible to receive automatic execution will execute against public customer orders in the electronic book. The remaining balance of the incoming order, if any, may be (i) Represented in the electronic book provided such order is eligible for book entry [15] or (ii) if the order is not eligible for book entry, it will route to PAR, BART, or to the order entry firm's booth printer.

On the Hybrid 3.0 platform, automatic execution against quotes (whether electronic or manual) will not be allowed.[16] However, if the electronic book price matches a manual quote, then automatic execution will be permissible against public customer orders in the electronic book.[17] CBOE represented that, consistent with existing practices in CBOE's non-Hybrid

[3] Amendment No. 2 replaced and superseded Amendment No. 1 and the original filing in their entireties.

[4] Securities Exchange Act Release No. 55674 (April 26, 2007), 72 FR 24639 (May 3, 2007).

[5] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

[6] The three current non-Hybrid classes are options: on the S&P 100 Index—OEX; options on the S&P 500 Index—SPX; and options on the Morgan Stanley Retail Index—MVR.

[7] To incorporate Hybrid 3.0 into CBOE's existing Hybrid rules, CBOE has proposed to define all references to ''Hybrid,'' ''Hybrid System,'' and ''Hybrid Trading System'' in CBOE's rules to mean all CBOE hybrid platforms, including Hybrid 3.0, unless otherwise provided by a specific CBOE rule.

[8] Currently, the non-Hybrid platform allows for the use of an Exchange-sponsored autoquote system. However, according to CBOE, this functionality will not be available for Hybrid 3.0.

[9] Similar to the existing functionality for manual quotes in non-Hybrid classes, in Hybrid 3.0 the Exchange's disseminated OPRA quote will not distinguish between electronic and manual quotes but members of the trading crowd will be able to distinguish between electronic and manual quotes.

[10] A market participant is defined as a ''Market-Maker, a Remote Market-Maker, an in-crowd DPM or LMM, an e-DPM with an appointment in the subject class, and a floor broker or PAR Official representing orders in the trading crowd.'' *See* CBOE Rule 6.45B.

[11] *See* CBOE Rule 7.4(a)(1).

[12] *Id.*

[13] *See* CBOE Rule 6.8.01.

[14] *See* proposed changes to CBOE Rule 6.13(b)(i)(C)(i). This process is consistent with the appropriate Procedure Committee's ability to permit broker-dealer orders to be automatically executed through the Exchange's Retail Automatic Execution System (''RAES'') in CBOE's non-Hybrid Classes. *See* CBOE Rule 6.8.01.

[15] Even if an order is eligible for book entry, the order entry firm will have the discretion to have the remaining balance of the eligible order route to PAR, BART, or to the order entry firm's booth printer.

[16] *See* CBOE Rule 6.13. By comparison, currently in CBOE's non-Hybrid Classes, orders may be eligible for automatic execution against market maker quotes on RAES. *See* CBOE Rules 6.8 and 24.17. The Exchange represents that the number of trades that occur on RAES is minimal (approximately 1/10th of 1% of all volume occurs on RAES).

[17] *See* proposed changes to CBOE Rule 6.43(b). For example, if the electronic book is a $1.20 bid and the manual quote is at a $1.20 bid, then the system will allow for automatic execution against the $1.20 electronic book bid but not the $1.20 quote. In addition, if the Hybrid 3.0 crowd quote matches the electronic book price, automatic execution against public customer orders in the book is permissible.

Classes, the Exchange will apply similar firm quote surveillance procedures in Hybrid 3.0 to monitor for compliance with members' firm quote obligations.

*D. Application of CBOE Rule 6.45B*

CBOE Rule 6.45B, which relates to the priority and allocation of trades, will apply to trading in Hybrid 3.0 classes in the same way it is applied to CBOE's existing Hybrid Trading System. For example, multiple customer orders in the electronic book at the same price will be ranked based on time priority pursuant to the priority methods set forth in Rule 6.45B.[18] Further, unlike CBOE's non-Hybrid classes, Hybrid 3.0 will allow (i) Each Market-Maker in the trading crowd and (ii) all floor brokers in the trading crowd (collectively referred to as ''in-crowd market participants'' or ''ICMPs'') to trade against the electronic book pursuant to CBOE Rule 6.45B(c).[19]

CBOE Rule 6.45B(d) currently governs the interaction of quotes when they are locked (*e.g.*, $1.00 bid—1.00 offer). Specifically, CBOE Rule 6.45B(d) provides that when the quotes of two Market-Makers interact (*i.e.*, ''quote lock''), either party has one second during which it may move its quote without obligation to trade with the other party. If, however, the quotes remain locked at the conclusion of one-second, the quotes trade in full against each other. For quote locks in Hybrid 3.0 classes, the appropriate Procedure Committee will set the length of the counting period, provided that the period shall not exceed ten seconds.[20] According to the Exchange, the proposed ten second threshold is intended to provide additional flexibility for Market-Makers to become acclimated with Hybrid 3.0.[21]

Regarding the time periods required for order exposure in Interpretation .01 of Rule 6.45B (''Principal Transactions'') and Interpretation .02 of Rule 6.45B (''Solicitation Orders''), CBOE has proposed a minimum exposure time for Hybrid 3.0 classes, on a class by class basis, to be at least three seconds but not to exceed thirty seconds.[22] According to CBOE, this extended time frame for exposure will provide additional flexibility as ICMPs become more acclimated with Hybrid 3.0.[23]

*E. Opening Procedures*

Only the DPM or LMM responsible for generating the Hybrid 3.0 crowd quote will be required to enter quotes as part of the opening rotations in Hybrid 3.0 option classes. The DPM or LMM must enter opening quotes in opening rotations that comply with the legal quote width requirements of Rule 8.7(b)(iv), and if there is not a quote present in a series that complies with the legal quote width requirements of Rule 8.7(b)(iv), then that series will not open.[24] Additionally, Hybrid 3.0 will allow public customer, broker-dealer, Exchange Market-Maker, away Marker-Maker and Specialist participation in the opening. Since Hybrid 3.0 is a single quoter environment, these participants will not be permitted to enter opening quotes in opening rotations but will be permitted to directly enter opening orders in opening rotations in Hybrid 3.0 classes.[25] Further, similar to the rules for CBOE's non-Hybrid classes, Hybrid 3.0 also proposes to allow special ''modified'' opening procedures for settlement in options on the Volatility Indexes.[26]

**III. Discussion**

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The proposed rules for Hybrid 3.0 are similar to existing rules applicable to trading in Hybrid and/or non-Hybrid classes. The Commission believes that the proposed rules for the Hybrid 3.0 platform, including those pertaining to quoting, order eligibility in the electronic book, automatic execution, order priority and allocation, are consistent with the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change as modified by Amendment Nos. 1 and 2 thereto (File No. SR–CBOE–2006–101) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant delegated authority.[30]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–11366 Filed 6–12–07; 8:45 am]

**BILLING CODE 8010–01–P**

[18] *See* CBOE Rule 6.45B(a)(ii)(A)(1).

[19] This process is the same as for existing Hybrid classes.

[20] *See* proposed changes to CBOE Rule 6.45B(d).

[21] By comparison, the current quote lock timer for Hybrid and Hybrid 2.0 classes may not exceed one second. *See* CBOE Rule 6.45B(d)(i)(C).

[22] *See* proposed changes to CBOE Rule 6.45B.01 and 6.45B.02.

[23] By comparison, the current exposure period for Hybrid and Hybrid 2.0 classes is at least three seconds. *See* CBOE Rule 6.45B.01 and 6.45B.02.

[24] This is consistent with the opening quote requirements in CBOE's existing Hybrid classes that utilize CBOE's Hybrid Opening System (''HOSS''). *See* CBOE Rule 6.2B.

[25] *See* proposed Interpretation .01 to CBOE Rule 6.2B. By comparison, currently in non-Hybrid option classes (such as SPX and OEX), public customers, Market-Makers and broker-dealers are not able to directly participate in the opening rotations (for series that utilize the Exhange's Rapid Opening System). For example, Market-Makers who wish to participate on ROS in the opening rotation in non-Hybrid option classes must submit orders through the LMM at least ten minutes prior to the opening of trading pursuant to CBOE Rules 6.2A and 24.13.

[26] *See* the ''Modified HOSS Opening Procedures'' in proposed Interpretation .01 to CBOE Rule 6.2B. By comparison, non-Hybrid option classes that utilize RAES and ROS have special procedures for purposes of settlement in the volatility indexes called ''Modified ROS Opening Procedures'' pursuant to Interpretation .03 to CBOE Rule 6.2A.

[27] 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).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55873; File No. SR–CBOE–2007–50]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Marketing Fee Program

June 7, 2007.

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 May 29, 2007, 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 substantially prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend its Marketing Fee Program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has substantially 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

CBOE proposes to amend its marketing fee program in two respects. First, CBOE proposes to amend its fees schedule to reduce the fee that is collected in the option classes participating in the Penny Pilot Program in which the marketing fee is applicable from $0.25 to $0.10. CBOE intends to implement this change effective June 1, 2007.

Second, CBOE's marketing fee program states that it is currently in effect until June 2, 2007, which is the date that CBOE's pilot program establishing its Preferred Market-Maker Program is scheduled to expire. However, CBOE has filed a proposed rule change requesting permanent approval of its Preferred Market-Maker Program.[5] Therefore, CBOE proposes to delete the last sentence in footnote 6 of its fees schedule that states, ''CBOE's marketing fee program as described above will be in effect until June 2, 2007.''

CBOE is not amending its marketing fee program in any other respects.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

*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**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–50 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–50. 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. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–50 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–11371 Filed 6–12–07; 8:45 am]

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[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55826 (May 29, 2007), 72 FR 31357 (SR–CBOE–2007–47) (permanent approval of CBOE's Preferred Market-Maker Program).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55870; File No. SR–NASDAQ–2007–037]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Order Audit Trail System Rules To Provide an Exemption From Transmission Requirements for Proprietary Orders and Amendment No. 1 Thereto

June 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On June 4, 2007, Nasdaq filed Amendment No. 1, which replaced the text of the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify its Order Audit Trail System (''OATS'') rules to provide an exemption from OATS transmission requirements for certain proprietary orders. The text of the proposed rule change is available at *http://www.nasdaq.com*, at Nasdaq, 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, Nasdaq 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.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to modify its OATS rules to adopt a limited exemption from OATS order data transmission requirements for proprietary trading firms. OATS is an integrated audit trail of order, quote, and trade information for Nasdaq securities used to recreate events in the life cycle of orders and more completely monitor the trading practices of member firms.

A ''Proprietary Trading Firm'' is proposed to be defined as meaning a Nasdaq member that trades its own capital with all the trading being done in the firm's accounts by traders that are owners of, employees of, or contractors to the firm. Additionally, a Proprietary Trading Firm does not have ''customers,'' as that term is defined in Nasdaq Rule 0120(g) and is not a member of the National Association of Securities Dealers, Inc. (''NASD''). At present, there are no Proprietary Trading Firms that are also market makers.

Nasdaq also proposes to revise Nasdaq Rule 6955 to add that a Proprietary Trading Firm, and persons associated with a Proprietary Trading Firm, only upon request would be required to transmit order data information for specific time periods stated in a request to Nasdaq Regulation.[3] Although a Proprietary Trading Firm would not be required to transmit the order data information to Nasdaq Regulation unless requested, it still would be held responsible for maintaining and retaining the information in a format that could be easily integrated into the NASD's OATS system in the event Nasdaq Regulation makes a request for such information.

The current requirement for Proprietary Trading Firms to transmit all data order information is onerous and not offset by an equivalent regulatory benefit. It is very expensive for firms to develop and maintain the compliance systems and compliance staff required to continuously monitor the daily transmission of OATS data. Additionally, the transmission of OATS data often results in either rejections or mismatches.[4]

Errors can result from a programming error even if it just a misplaced semicolon. To cure these issues, members may need to spend an inordinate amount of time correcting a minor glitch with NASD. Mismatches occur when NASD reconstitutes the order and any discrepancies exist between the order origination and order execution, which may be different entities.[5] Often times the discrepancy is of very minor consequence, but triage efforts are overly burdensome.

The basis for OATS is customer protection through the transparency of the executions of customer orders. The proposed rule change does not impact this, since by definition, Proprietary Trading Firms do not handle customer orders. OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution. This requirement only came into effect during the later stages of the OATS implementation. Also, as mentioned below, no other exchange has a daily transmission requirement for this category of customer.

This approach parallels, in a much more limited manner, the approach undertaken by the New York Stock Exchange (''NYSE'') in NYSE Rule 132C, which requires NYSE members, upon request, to transmit order tracking data to the NYSE.[6] The NYSE has stated that it has been its experience that ''submission of data by request has proven to be effective and efficient''[7] from both the NYSE's and its members' perspective.

Additionally, much of the information retained by a Proprietary Trading Firm is otherwise available to the Nasdaq

[3] Rule 0130 provides that the term Nasdaq Regulation should be understood as also referring to NASD staff, NASD Regulation staff, and NASD departments acting on behalf of Nasdaq pursuant to the Regulatory Contract. NASD Regulation has agreed to perform certain functions on behalf of Nasdaq pursuant to a regulatory services agreement.

[4] OATS rejections may occur for a multitude of reasons including: Incorrect symbol; duplicate order event; cancelled time stamp prior to order timestamp; canceled timestamp greater than current date and time; issue is not reportable to OATS; issue symbol invalid for order event date; missing or invalid shares quantity or Buy/Sell code; missing or invalid member type code or issue symbol ID; missing or invalid cancel quantity; missing time in force code; missing or invalid firm order ID; and missing or invalid expiration time.

[5] Common causes of mismatches include: missing branch/sequence numbers; improperly formatted branch/sequence numbers on one of the reports; differing execution timestamps; missing reporting exception codes and late reporting of OATS execution reports.

[6] *See* Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (SR–NYSE–99–51).

[7] *Id.* at 20202.

Regulation through Nasdaq's systems, and Nasdaq can use such information and supply it to the NASD, upon request, as well. This information includes trade reporting data, including order time and sales data captured by the Nasdaq system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that the proposal 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.

*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, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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, as amended, 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–2007–037 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASDAQ–2007–037. 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. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2007–037 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–11369 Filed 6–12–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55872; File No. SR–OCC–2007–01]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Credit Default Options

June 6, 2007.

## I. Introduction

On February 13, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–OCC–2007–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On March 7, 2007, OCC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on March 5, 2007.[3] No comment letters were received. This order approves the proposed rule change as amended.

## II. Description

The purpose of the proposed rule change is to permit OCC to clear and settle credit default options (''CDOs''), which are options related to the creditworthiness of an issuer or guarantor (''reference entity'') of one or more specified debt securities (''reference obligation(s)''). CDOs are ''binary'' options that pay a fixed amount to the holder of the option upon the occurrence of a ''credit event'' affecting the reference obligations.[4] CDOs will be traded by the Chicago Board Options Exchange (''CBOE'').[5]

*Description of Credit Default Options*

CDOs are structured as binary options that are automatically exercised and the exercise settlement amount payable if a ''credit event'' occurs at any time prior to the last day of trading. A ''credit event'' is generally defined as any failure to pay on any of the reference

[1] 15 U.S.C. 78s(b)(1).

[2] The March 7, 2007, amendment reflects OCC's determination to seek approval for the credit default option product only and not for binary options in general. Because Amendment No. 1 is technical in nature, the Commission is not republishing the notice of filing for public comment.

[3] Securities Exchange Act Release No. 55362 (February 27, 2007), 72 FR 9826.

[4] ''Binary'' options (also sometimes referred to as ''digital'' options) are ''all-or-nothing'' options that pay a fixed amount if automatically exercised and otherwise pay nothing.

[5] Securities Exchange Act Release Nos. 55251 (February 7, 2007), 72 FR 7091 (February 14, 2007) (notice of filing of proposed rule change); 55871 (June 6, 2007) (order approving proposed rule change) [File No. SR–CBOE–2006–84].

obligations or any other occurrence that would constitute an ''event of default'' or ''restructuring'' under the terms of any of the reference obligations and that the listing exchange has determined would be a credit event for purposes of the CDO. The payout or settlement amount for a single exercised option CBOE CDO will be $100,000.

*By-Law and Rule Amendments Applicable to CDOs*

In order to accommodate trading in CDOs, OCC is adding a new By-Law Article and a new Chapter to its Rules to incorporate several new defined terms and procedures for clearing and settling CDOs.

1. Terminology—Article I, Section 1 and Article XIV, Section 1 of the By-Laws

The definition of ''expiration time'' in Article I of the By-Laws is modified to be a default provision to permit the expiration time to be defined differently for different classes of options. The definition of ''option contract'' in Article I of the By-Laws is amended to include a credit default option and to provide a more generic definition of ''cash-settled option.''

''Adjustment event'' is defined in Article XIV by reference to the rules of the listing exchange. Similarly, ''credit event'' is defined by reference to exchange rules. The terms ''credit event confirmation'' and ''credit event confirmation deadline'' are used, respectively, to refer to the notice that must be provided by the listing exchange or other reporting authority to OCC that a credit event has occurred (and that a CDO will therefore automatically be exercised) and to the deadline for receipt of such notice if it is to be treated as having been received on the business day on which it is submitted. Credit event confirmations received after the deadline on the expiration date but before the expiration time will be given effect but may result in delayed exercise settlement.

OCC is also defining the term ''exercise settlement amount'' in Article XIV for purposes of credit default options. The exercise settlement amount of a credit default option is the amount specified by the exchange on which the option is traded that will be paid in settlement of an automatically exercised option. CBOE has specified the exercise settlement amount for a single CDO as $100,000. OCC's proposed definition would permit an exchange to specify a different exercise settlement amount. The exercise settlement amount will be determined by the exchange at the time of listing when the exchange fixes the other variable terms for the options of a particular class or series.

OCC is replacing the definitions of ''variable terms,'' ''premium,'' and ''multiplier'' in Article I with revised definitions in Article XIV, Section 1 that are applicable to credit default options. The term ''class'' is also redefined in Article XIV, Section 1. To be within the same class, CDOs must have the same reporting authority, which OCC anticipates will ordinarily be the listing exchange. This is necessary because of the degree of discretion that the reporting authority will have in determining whether a credit event has occurred.

CDOs will be a category of options where exercise is triggered by a discrete event such as a ''credit event'' affecting the ''reference obligations'' issued by a ''reference entity,'' which terms are defined to have the meanings given to them in the rules of the listing exchange. The term ''underlying interest'' is defined to be the reference obligation(s) with respect to which the credit event will or will not occur.

2. Terms of Cleared Contracts—Article VI, Section 10(e)

A new paragraph (e) is added to Article VI, Section 10 so that an exchange is required to designate the exercise settlement amount, expiration date, and exercise price for a series of credit default options at the time the series is opened for trading. Section 10(e) also reminds the reader that credit default options are subject to adjustment under Article XIV.

3. Rights and Obligations—Article XIV, Section 2

Article XIV, Section 2 defines the general rights and obligations of holders and writers of credit default options. As noted above, the holder of a credit default option that is automatically exercised has the right to receive the fixed exercise settlement amount from OCC, and the assigned writer has the obligation to pay that amount to OCC.

4. Adjustments of Credit Default Options—Article XIV, Section 3; Determination of Occurrence of Credit Event—Article XIV, Section 4

Article XIV, Section 3 provides for adjustment of CDOs in accordance with the rules of the listing exchange. CBOE's rules provide for adjustment of CDOs in the case of certain corporate events affecting the reference obligations, and OCC proposes simply to defer to the rules and to the determinations of the listing exchange pursuant to its rules. Accordingly, OCC will have no responsibility for adjustment determinations with respect to CDOs.

Similarly, Section 4 provides that the listing exchange for a class of CDOs will have responsibility for determining the occurrence of a credit event that will result in automatic exercise of the options of that class. The listing exchange has the obligation to provide a credit event confirmation to OCC in order to trigger the automatic exercise.

5. Exercise and Settlement—Chapter XV of the Rules and Rule 801

Credit default options will not be subject to the exercise-by-exception procedures applicable to most other options under OCC's Rules but would instead be automatically exercised at expiration if the specified criterion for exercise is met. The procedures for the automatic exercise of credit default options, as well as their assignment and settlement (including during periods when a clearing member is suspended), are set forth in Rules 1501 through 1505 of new Chapter XV and in revised Rule 801(b).

6. Special Margin Requirements—Rule 601; Deposits in Lieu of Margin—Rule 1506

OCC will not initially margin CDOs through its usual ''STANS'' system. Because of CDOs' fixed payout feature, further systems development is needed to accommodate these options in STANS. Until such development is completed, OCC has initially determined to require that writers of such options post margin in a fixed amount that will be set at 100% of the fixed exercise settlement amount applicable to each series of CDOs. OCC would have discretion to reduce the requirement to something less than 100% if research, analysis, and experience suggest that a lower percentage is sufficient. Initially, long positions in CDOs will be valued at zero and will provide no offset against margin requirements on shorts. Again, based on research, analysis, and experience, OCC may determine to give some value to the longs. Ultimately, CDOs will be incorporated into the STANS system and will be valued and margined on a risk basis.

OCC does not propose to accept escrow deposits in lieu of clearing margin for credit default options. Therefore, Rule 1506 states that Rule 610, which otherwise would permit such deposits, does not apply to credit default options.

7. Acceleration of Expiration Date—Rule 1507

This provision permits OCC to accelerate the expiration date of a credit default option when the option is deemed to have been exercised on any day prior to the expiration date.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] The Commission finds the proposed rule change to be consistent with Section 17A(b)(3)(F) of the Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in, including exercises of, credit default options and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions.[7] These purposes are accomplished by having the clearance and settlement of CDOs take place at OCC and by OCC applying substantially the same rules and procedures to CDOs as it applies to similar transactions in other cash-settled options.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2007–01) as modified by Amendment No. 1 be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–11370 Filed 6–12–07; 8:45 am]

**BILLING CODE 8010–01–P**

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 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).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55860; File No. SR–Phlx–2007–41]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Modification of Phlx Rule 185A

June 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 25, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Exchange filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which rendered 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 Phlx proposes to amend Phlx Rule 185A, which clarified the entry, routing and other requirements of certain orders on XLE, the Exchange's electronic equity trading system, prior to March 5, 2007, the Trading Phase Date,[5] to make certain provisions of the rule applicable until the All Stocks Phase Date.[6] The text of the proposed rule change is available on Phlx's Web site, *http://www.phlx.com*, at Phlx's principal office, 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 Phlx 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 Phlx 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 clarify the obligation of XLE Participants when submitting certain XLE order types before the All Stocks Phase Date. Phlx Rule 185A, Orders and Order Execution—Temporary, was adopted in November 2006, to clarify the entry, routing and other requirements of certain orders on XLE in the period before the Trading Phase Date.[7] Phlx Rule 185A was subsequently amended twice.[8] Each amendment addressed the period before the Trading Phase Date.

Phlx Rule 185A clarified the routing of orders from XLE to other marketplaces,[9] the entry of Intermarket Sweep Orders and IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirement of an intermarket sweep order,[10] the requirements for certain IOC Cross Orders marked as Benchmark,[11] and the requirements for certain IOC Cross Orders marked as Qualified Continent Trades.[12] At this time, Phlx proposes to delete the provisions of Phlx Rule 185A that applied to routing and modify the remaining provisions of the rule to make them applicable to the period prior to the All Stocks Phase Date.

Specifically Phlx Rule 185A(a) is being modified to delete provisions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Trading Phase Date was the ''[f]inal date for full operation of Regulation NMS-compliant trading systems [by exchanges] that intend[ed] to qualify their quotations for trade-through protection under Rule 611 [during the roll-out of Regulation NMS].'' *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

[6] The All Stocks Phase Date is the date that full industry compliance with Rules 610 and 611 of Regulation NMS, 17 CFR 242.610 and 611, begins. Currently, the All Stocks Phase Date is scheduled to be August 20, 2007. *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007). However, should the Commission change the All Stocks Phase Date, the changes to Phlx Rule 185A adopted in this proposed rule change will remain in effect until that new date.

[7] *See* Securities Exchange Act Release No. 54760 (November 15, 2006), 71 FR 67687 (November 22, 2006) (SR–Phlx–2006–76).

[8] *See* Securities Exchange Act Release Nos. 55044 (January 5, 2007), 72 FR 1361 (January 11, 2007) (SR–Phlx–2006–92) and 54788 (November 20, 2006), 71 FR 68877 (November 28, 2006) (SR–Phlx–2006–77).

[9] *See* Phlx Rule 185A(a).

[10] *See* Phlx Rule 185A(b).

[11] *See* Phlx Rule 185A(c).

[12] *See* Phlx Rule 185A(d).

regarding routing of orders on XLE since intermarket sweep orders have been available at all venues to which XLE will route an order since the Trading Phase Date. In its place, Phlx Rule 185A(a) will define the term ''All Stocks Phase Date.'' Additionally, Phlx Rule 185A(b)–(d) are being amended to substitute the term ''All Stocks Phase Date'' for ''Trading Phase Date'' as the provisions of these sections of the rule will apply until the All Stocks Phase Date. At that time, Phlx will delete Phlx Rule 185A from its rulebook as it will no longer have any effect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] As required under Rule 19b–4(f)(6)(iii) under the Act,[17] Phlx 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 the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) under the Act [18] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) under the Act [19] 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, which would make the rule change effective and operative upon filing. In its filing, the Exchange stated its belief that waiver of the operative delay would be consistent with the protection of investors and the public interest because the amended temporary rule should eliminate potential confusion relating to orders on XLE and clarify XLE Participant obligations when submitting certain order types to the Exchange.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change clarifies the obligations of XLE Participants when submitting certain order types to the Exchange before the All Stocks Phase Date. In particular, the proposal amends the text of Phlx Rule 185A, which had previously been applicable to the Trading Phase Date, to reflect the applicability of those provisions which will remain in effect until the All Stocks Phase Date. Once the All Stocks Phase Date arrives, the applicable provisions of Phlx Rule 185 will be operative and the Exchange will no longer need temporary Rule 185A.[20] Accordingly, consistent with the protection of investors and the public interest, the Commission designates the proposed rule change to be operative upon filing with the Commission.[21]

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.[22]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2007–41 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–41. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] As the Exchange has made clear in its filing, it intends to delete Phlx Rule 185A from its rulebook upon the All Stocks Phase Date. Given the definitively limited application of the amended rule and the specified removal date, the Exchange does not intend to file a separate proposed rule change to remove the rule text from its rulebook, but rather will remove the rule as specified.

[21] For the 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).

[22] *See* 15 U.S.C. 78s(b)(3)(C).

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–41 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–11368 Filed 6–12–07; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10870]**

### Vermont Disaster Number VT–00003

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–1698–DR), dated 05/04/2007.

*Incident:* Severe storms and flooding.

*Incident Period:* 04/15/2007 through 04/21/2007.

*Effective Date:* 06/04/2007.

*Physical Loan Application Deadline Date:* 07/03/2007.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Vermont, dated 05/04/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Lamoille.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E7–11345 Filed 6–12–07; 8:45 am]

**BILLING CODE 8025–01–P**

[23] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or emailed to the individuals at the addresses and fax numbers listed below:

OMB, Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *e-mail address: OIRA_Submission@omb.eop.gov.*

SSA, Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *e-mail address: OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. National 800 Number—Claims Status—20 CFR 401.45—0960–NEW. SSA has established a process for authenticating the information of individuals who use the automated telephone services or speak to an agent to request information from SSA records. Prior to SSA responding to requests for personal information through the automated telephone services, we must authenticate the requester's information by obtaining the appropriate identification elements. This automated telephone service will provide callers with status of a Social Security claim which they have filed. All information provided will then be compared to the information contained in our records so that the appropriate claim is accessed and the respondent is given the status of that claim. Respondents are current Social Security beneficiaries.

*Type of Request:* Request for a new information collection.

*Number of Respondents:* 704,422.

*Frequency of Response:* 1.

*Average Burden per Response:* 1 minute.

*Estimated Annual Burden:* 11,740 hours.

2. Function Report-Child: Birth to 1st Birthday (SSA–3375), Age 1 to 3rd Birthday (SSA–3376), Age 3 to 6th Birthday (SSA–3377), Age 6 to 12th Birthday (SSA–3378), and Age 12 to 18th Birthday (SSA–3379)—20 CFR 416.912—0960–0542. State Agency adjudicative teams use the information gathered by these forms in combination with other medical function evidence to form a complete picture of a child's ability to function. This information is used to help determine if a child is disabled, especially in cases in which disability cannot be found on medical grounds alone. The respondents are applicants for Title XVI childhood disability benefits and their caregivers.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 550,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 20 minutes.

*Estimated Annual Burden:* 183,333 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Notice Regarding Substitution of Party On Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.917–404.921 and 416.1407–416.1421—0960–0351. Form SSA–770 is used when a claimant dies before a determination is made on that person's request for reconsideration on his/her disability cessation. SSA seeks a qualified substitute party to pursue the appeal. If the qualified

substitute party is located, the SSA–770 is used to collect information regarding whether to pursue or withdraw the reconsideration request. The information collected on the SSA–770 forms the basis of the decision to continue or discontinue the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,200.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 100 hours.

2. State Agency Report of Obligations for SSA Disability Programs (SSA–4513); Time Report of Personnel Services for Disability Determination Services (SSA–4514); State Agency Schedule of Equipment Purchased for SSA Disability Programs (SSA–871)—20 CFR 404.1626—0960–0421 (Correction to Burden Data). Forms SSA–4513, SSA–4514 and SSA–871 are used to collect data necessary for detailed analysis and evaluation of costs incurred by State Disability Determination Services (DDS) in making determinations of disability for SSA. The data are also utilized in determining funding levels for each DDS. Respondents are State DDSs.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 52.

*Estimated Annual Burden:* 756 hours.

| | Respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–4513 & Addendum | 52 | 4 | 90 | 312 |
| SSA–4514 | 52 | 4 | 90 | 312 |
| SSA–871 | 52 | 4 | 30 | 104 |
| Totals | 52 | | | 728 |

**Please note:** We are correcting the number of respondents to this collection. In our notice published March 23, 2007 at 72 FR 13851 we initially state there are 54 State DDS's, whereas there are only 52.

3. Subpoena-Disability Hearing—20 CFR 404.916(b)(1) & 416.1416(b)(1)—0960–0428. Form SSA–1272–U4 is completed by State and Federal disability hearing officers to subpoena evidence or testimony in connection with hearings required by the Social Security Act. Actual issuance of the subpoena will be done by that appropriate delegated SSA official. Respondents are disability hearing officers.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 36.

*Frequency of Response:* 1.

*Average Burden per Response:* 30 minutes.

*Estimated Annual Burden:* 18 hours.

4. Summary of Evidence—20 CFR 404.913(b), 404.914(a), 416.1707, 416.1313(b), 416.1414(a)—0960–0430. Form SSA–887 is completed by a Disability Hearing Officer (DHO) from the claimant's State Disability Determination Service (DDS). The DHO summarizes all medical and vocational reports that were used to make the no-disability determination. This form, which is used to prepare for and conduct the disability hearing, is also made available to claimants so that they are aware of the basis for the no-disability decision and they can prepare for the reconsideration accordingly. Respondents are Disability Hearing Officers.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 49,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 15 minutes.

*Estimated Annual Burden:* 12,250 hours.

5. Information About Joint Checking/Savings Accounts—20 CFR 416.1201(b), 416.1208—0960–0461. The SSA–2574 is used to collect information when a Supplemental Security Income (SSI) applicant/recipient objects to the assumption that he/she owns all or part of the funds in a joint checking or savings account which bears his or her name. Information about the account is collected from both the SSI applicant/recipient and other accountholder(s). These statements regarding ownership are required to determine whether the account is a resource of the SSI claimant. The amount of resources a person owns is one of the factors considered in determining eligibility for SSI. Respondents are applicants and recipients of SSI and individuals who are joint owners of financial accounts with SSI applicants/recipients.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 200,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 7 minutes.

*Estimated Annual Burden:* 23,333 hours.

6. Beneficiary Recontact Form—20 CFR 404.703, 404.705—0960–0502. SSA must ensure that eligibility for benefits continues after entitlement. Studies show that mothers/fathers who marry fail to report the marriage and or the fact that they no longer have a child entitled in their care. SSA uses the SSA–1588–OCR–SM to ask mothers/fathers about their marital status and children in care to detect overpayments and avoid continuing payment to those no longer entitled. Respondents are recipients of survivor mother/father Social Security benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 133,400.

*Frequency of Response:* 1.

*Average Burden per Response:* 5 minutes.

*Estimated Annual Burden:* 11,117 hours.

7. Earnings Record Information—20 CFR 404.801–404.803 and 404.821–404.822—0960–0505. The information collected by form SSA–L3231–C1 is used to ensure that the proper person is credited for working when earnings are reported for a minor under the age of 7 years. The respondents are businesses reporting earnings for children under age 7.

*Type of Information Collection:* Extension of an OMB-approved information collection.

*Number of Respondents:* 20,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 10 minutes.

*Estimated Annual Burden:* 3,333 hours.

8. Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547. The information collected through 20 CFR 422.122(b) is used by SSA to identify the requestor of pension plan information and to confirm the individual is entitled to the data SSA provides. Respondents are requestors of pension plan information.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 600.

*Frequency of Response:* 1.

*Average Burden per Response:* 30 minutes.

*Estimated Annual Burden:* 300 hours.

9. Youth Transition Process Demonstration Evaluation Data Collection—0960–0687.

**Background**

The Youth Transition Demonstration YTD projects are intended to help young people with disabilities make the transition from school to work. By waiving certain disability program rules and offering services to youth who are either receiving disability benefits or at risk of receiving them, these projects are expected to encourage youth to work and/or continue their education. YTD projects will be fully implemented in 10 sites across the country. The evaluation will produce empirical evidence on the impacts of the waivers and project services not only on educational attainment, employment, earnings, and receipt of benefits by youth with disabilities but also on the Social Security Trust Fund and federal income tax revenues. This type of project is authorized by sections 1110 and 234 of the Social Security Act.

**Project Description**

Given the importance of estimating YTD impacts as accurately as possible, the evaluation will be conducted using rigorous analytic methods based on the random assignment of youth to a treatment or control group. Several data collection efforts are planned. These include (1) baseline interviews with youth and their parents or guardians prior to random assignment; (2) follow-up interviews at 12 and 36 months after random assignment; (3) interviews and/or roundtable discussions with local program administrators, program supervisors, and service delivery staff; and (4) focus groups of youth, their parents, and service providers. The respondents will be youth with disabilities who have enrolled in the project, their parents or guardians, program staff, and service providers.

*Type of Request:* Revision of an existing OMB Clearance.

| Data collection year | Collection | Number of respondents | Responses per respondent | Average burden per response (hours) | Total response burden (hours) |
|---|---|---|---|---|---|
| 2007 | Baseline | 962 | 1 | 0.55 | 529 |
| | Informed Consent | 962 | 1 | 0.83 | 80 |
| | 12 month follow-up [1] | 437 | 1 | 0.83 | 363 |
| | Focus group | 140 | 1 | 1.5 | 210 |
| | Program staff/service provider. | 32 | 1 | 1 | 32 |
| Total 2007 | | | | | 1,214 |

[1] We conduct follow-up interviews only for those baseline respondents who sign consent forms.

10. Request for Program Consultation—20 CFR 404.1601–1661—0960–New. The Disability Determination Services (DDS) offices are staffed by State employees who perform disability determinations for applicants for Social Security disability benefits under Title II and Title XVI of the Social Security Act. SSA's federal regional quality assurance office has the authority to review DDS determinations, to assess errors, and to return cases for corrective action by the DDS.

The information collected on the Request for Program Consultation (RPC) will be used by the DDS's that request a review of the regional quality assurance evaluations. The DDS's use the RPC to present their rationale that supports their determinations. The information collected includes a short rationale and policy citations supporting their rebuttal. The RPC team will use the information to reassess their initial determination. The respondents are DDS's who request a review of the regional quality assurance determination.

*Type of Request:* Request for a new information collection.

*Number of Respondents:* 4,500.

*Frequency of Response:* 1.

*Average Burden per Response:* 50 minutes.

*Estimated Annual Burden:* 3,750 hours.

11. Request to Decision Review Board To Vacate the Administrative Law Judge Dismissal of Hearing—20 CFR 405.427—0960–NEW. The information collected on Form SSA–525 will be used by Social Security Administration's Decision Review Board (Board) when a hearing on a claim for Title II or Title XVI disability payments is dismissed and the claimant requests that the dismissal be vacated. The Board will use this information to (1) establish the continued involvement of the requester in his or her claim; (2) consider the requester's arguments for vacating the dismissal; and (3) vacate or decline to vacate the administrative law judge's dismissal order. The respondents are Social Security disability or Supplemental Security Income (SSI) claimants who are requesting that the dismissal be vacated.

*Type of Request:* Request for a new information collection.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 5,000 hours.

12. Medical History and Disability Report, Disabled Child—20 CFR 416.912—0960–0577. The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. The form SSA–3820 is used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The information collected on the SSA–3820 is needed for the determination of disability by the State DDSs. The respondents are applicants for Title XVI child disability benefits.

*Type of Request:* Revision to an OMB-approved information collection.

| Collection format | Number of respondents | Frequency of responses | Average burden per responses | Estimated annual burden (hour) |
|---|---|---|---|---|
| SSA–3820 (Paper Form) | 500 | 1 | 1 hour | 500 |
| Electronic Disability Collection System (EDCS) | 422,000 | 1 | 34 minutes | 239,133 |

| Collection format | Number of respondents | Frequency of responses | Average burden per responses | Estimated annual burden (hour) |
|---|---|---|---|---|
| i3820 (Internet) | 39,500 | 1 | 2 hours | 79,000 |
| Totals | 462,000 | | | 318,633 |

13. Social Security Disability Report—20 CFR 404.1512 & 416.912—0960–0579. The Social Security Administration requires applicants for disability payments to furnish medical, work history, and other evidence or information indicating they have an impairment which is disabling. This information is collected by form SSA–3368, the Adult Disability Report, and is used by State DDS's to make disability determinations for SSA.

The respondents are applicants for Title II and Title XVI disability benefits. These applicants may complete the form using any of the following modalities: (1) The traditional paper form; (2) an interview with an SSA field office representative, using the EDCS; (3) the Internet (i3368); and (4) a modality, the i3368–PRO, an Internet form designed to be completed by representatives of applicants for disability payments. The latter three versions of the form collect the same information as the paper form, but may be formatted differently and include certain enhancements (ex: self-help screens) to guide the claimant or interviewer through the application process.

*Type of Request:* Revision to an OMB-approved information collection.

| Collection format | Number of respondents | Frequency of response | Average burden per response (hours) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–3368 (Paper version) | 9,364 | 1 | 1 | 9,364 |
| Field office/EDCS | 3,138,920 | 1 | 1 | 3,138,920 |
| i3368 (Internet version; Hour burden varies from 1½–3 hours, depending on information required) | 101,135 | 1 | 2½ | 252,837 |
| i3368–PRO | 101,135 | 1 | 1½ | 151,702 |
| Totals | 3,350,554 | | | 3,552,823 |

14. Certification of Contents of Document(s) or Record(s)—20 CFR 404.715ff—0960–0689. SSA must secure evidence necessary for individuals to establish rights to benefits. Some of the types of evidence needed are evidence of age relationship, citizenship, marriage, death, and military service. Form SSA–704 allows SSA employees, state record custodians, and other custodians of evidentiary documents to record information from documents and records to establish these types of evidence. SSA employees use this form but it is also used by state record custodians and other custodians of evidentiary documents.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 4,800.

*Average Burden per Response:* 10 minutes.

*Estimated Annual Burden:* 800.

15. Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284. Each claimant has a statutory right to appear in person (or through a representative) and present evidence about his/her claim at a hearing before an Administrative Law Judge (ALJ). If a claimant wishes to waive his/her statutory right to appear before an ALJ, he/she must complete a written request. The claimant may use Form HA–4608 for this request. The information collected is used to document an individual's claim to show that an oral hearing is not preferred in the appellate process. The respondents are applicants for Title II benefits and Title XVI payments who request a hearing.

*Number of Respondents:* 12,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 2 minutes.

*Estimated Annual Burden:* 400 hours.

Dated: June 7, 2007.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. E7–11383 Filed 6–12–07; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 5833]**

## Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

**DATES:** *Effective Date:* As shown on each of the 13 letters.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan M. Clark, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2023.

**SUPPLEMENTARY INFORMATION:** Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

March 30, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles for the VINASAT–1 commercial communications satellite to Vietnam.

The United States Government is prepared to license the export of these items having taken into account political, military,

economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 016–07.

March 30, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia, Ukraine and Norway related to the launch of all commercial and foreign non-commercial satellites from the Pacific Ocean utilizing a modified oil platform.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 035–07.

March 30, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia related to the launch of all commercial and foreign non-commercial satellites from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 036–07.

March 30, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $100,000,000 or more.

The transactions contained in the attached certification concern future commercial activities related to the co-development of the Galaxy Express space launch vehicle upgrade program for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 037–07.

April 26, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data, defense articles, and defense services to Germany for the manufacture of chemical defense fabrics for end-use by the Ministries of Defense within the authorized sales territory.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification, which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 001–07.

April 26, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of technical information, including hardware and services for licensed production of the Evolved SeaSparrow Missile (ESSM) for ultimate sale to and end-use by the Japan Defense Agency (JDA).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner, *Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 013–07.

April 26, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services related to the Rolling Airframe Missile (RAM) MK 31 Guided Missile Weapon System (GMWS) for the KDX–II Destroyer and LPX Transport Programs for end use by the Republic of Korea Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 014–07.

May 9, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data, defense articles, and defense services to the United Kingdom for manufacture of the M53 Nuclear-Biological-Chemical Improved Protective mask for end-use by the U.S. Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 002–07.

May 9, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of defense articles, technical data and defense services for major defense equipment in an amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export of one C–130J–30 aircraft to Denmark.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 007–07.

May 9, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to manufacturing license agreement for the manufacture of defense articles abroad in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Turkey for the manufacture of the AN/ALQ–178(V)5+ Self Protection Electronic Warfare System (SPEWS II) for Turkish F16 Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 024–07.

May 18, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves defense services associated with the Ballistic Missile Defense (BMD) Expansion Project for the Japan Air Defense Ground Environment (JADGE) Program for end use by the Japan Defense Ministry.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Departemnt of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 012–07.

May 18, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of defense articles abroad in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Israel for the manufacture of J79 engine parts for integration into F4, F104, and Kfir Military Fighter Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 020–07.

May 18, 2007.

Hon. Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles to support sale of CH–47F Chinook helicopters to the Netherlands and the re-manufacture and modification of the Netherlands' CH–47D Chinook helicopters to the CH–47F configuration in support of Operation Enduring Freedom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 030–07.

Dated: June 5, 2007.

**Susan M. Clark,**

*Director, Office of Defense Trade Controls Licensing, Department of State.*

[FR Doc. E7–11507 Filed 6–12–07; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF STATE

**[Public Notice 5830]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Eternal Ancestors: Art of the Central African Reliquary''

*Summary:* Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Eternal Ancestors: Art of the Central African Reliquary'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about October 2, 2007, until on or about March 2, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

*For Further Information Contact:* For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of

the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 5, 2007.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7–11406 Filed 6–12–07; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5831]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Louvre Atlanta: The Louvre and the Ancient World; Eye of Josephine; and Houdon in France and America''

*Summary:* Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition Louvre Atlanta: The Louvre and The Ancient World; Eye of Josephine; and Houdon in France and America,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of The Louvre and The Ancient World exhibit objects at the High Museum of Art, Atlanta, Georgia, from on or about October 16, 2007, until on or about September 7, 2008; the exhibition or display of the Eye of Josephine exhibit objects at the High Museum of Art, Atlanta, Georgia, from on or about October 16, 2007, until on or about May 18, 2008; and the exhibition or display of the Houdon in France and America objects at the High Museum of Art, Atlanta, Georgia, from on or about June 7, 2008 until on or about September 7, 2008, and the Denver Art Museum, Denver, Colorado, from on or about October 12, 2008, until on or about January 4, 2009; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

*For Further Information Contact:* For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 5, 2007.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7–11403 Filed 6–12–07; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 5832]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Oceanic Art''

*Summary:* Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Oceanic Art'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about August 1, 2007, until on or about August 31, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

*For Further Information Contact:* For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 6, 2007.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7–11405 Filed 6–12–07; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–27515]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 24 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective June 13, 2007. The exemptions expire on June 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, 202–366–4001, FMCSA, Room W64–224, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing

the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov*.

**Background**

On April 30, 2007, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (72 FR 21313). That notice listed 25 applicants' case histories. The 25 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 25 applications on their merits and made a determination to grant exemptions to 24 of them. One applicant, Robert J. MacInnis, informed FMCSA that he was involved in a crash while operating a privately owned vehicle on May 2, 2007. Consequently, his driver's license was suspended for 45 days effective May 9, 2007. Due to this being a disqualifying offense, the Agency will not be granting him an exemption at this time. The comment period closed on May 30, 2007.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 25 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular scar, retinal damage from broken blood vessels, prosthesis, latent nystagmus, optic nerve injury, histoplasmosis syndrome, ocular hypertension, glaucoma and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but seven of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 7 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 25 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 7 to 40 years. In the past 3 years, three of the drivers have had convictions for traffic violations and one of them was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 30, 2007 notice (72 FR 21313).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal

of American Statistical Association, June 1971) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 25 applicants, two of the applicants had traffic violations for speeding, one applicant failed to obey a traffic sign, and one applicant was involved in a crash. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to 24 of the applicants listed in the notice of April 30, 2007 (72 FR 21313).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 24 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received no comments in this proceeding.

**Conclusion**

Based upon its evaluation of the 25 exemption applications, FMCSA exempts Roosevelt Bell, Jr., David K. Boswell, Melvin M. Carter, Bernabe V. Cerda, Michael S. Crawford, Rex A. Dyer, Patrick J. Goebel, Thomas A. Gotto, Louis W. Henderson, Jr., William P. Holloman, Wilbur J. Johnson, Joseph W. Mayes, Larry L. Morseman, Earl R. Neugebauer, Luis M. Ramos, Kenneth C. Reeves, Gregory C. Simmons, Dustin N. Sullivan, Thomas E. Summers, Jon C. Thompson, Lorenzo Wade, James S. Wheeler, Tommy N. Whitworth, and James M. Williams from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 6, 2007.

**Larry W. Minor,**

*Acting Associate Administrator, Policy and Program Development.*

[FR Doc. E7–11335 Filed 6–12–07; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–98–4334, FMCSA–00–7006, FMCSA–00–7363, FMCSA–00–7918, FMCSA–00–8398, FMCSA–01–9258, FMCSA–03–14223, FMCSA–03–14504, FMCSA–05–20027, FMCSA–05–20560]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 31 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 26, 2007. Comments must be received on or before July 13, 2007.

**ADDRESSES:** You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–98–4334, FMCSA–00–7006, FMCSA–00–7363, FMCSA–00–7918, FMCSA–00–8398, FMCSA–01–9258, FMCSA–03–14223,FMCSA–03–14504, FMCSA–05–20027, FMCSA–05–20560, using any of the following methods.

- Web Site: *http://dmses.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, 202–366–4001, FMCSA, Room W64–224, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 31 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 31 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David F. Bardsley, Sr.
Gary A. Barrett
Ivan L. Beal
Johnny A. Beutler
Daniel R. Brewer
James T. Butler, Jr.
Darryl D. Cassatt
Brett L. Condon
Mark W. Coulson
Albion C. Doe
John R. Hughes
Daryl A. Jester
Robert L. Joiner, Jr.
James P. Jones
Clyde H. Kitzan
Larry J. Lang
Dennis D. Lesperance
John W. Locke
Herman G. Lovell
Eugene A. Maggio
Ronald L. Maynard
William A. Moore, Jr.
Danny R. Pickelsimer
Richard S. Rehbein
Bernard E. Roche
Darrell L. Rohlfs
David E. Sanders
David B. Speller
Lynn D. Veach
Harry S. Warren
Michael C. Wines

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2 year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 31 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 15037; 70 FR 14747; 68 FR 35772; 70 FR 33937; 65 FR 20245; 65 FR 57230; 67 FR 57266; 65 FR 45817; 65 FR 77066; 65 FR 66286; 66 FR 13825; 68 FR 10300; 70 FR 7546; 65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 12265; 66 FR 17743; 66 FR 33990; 68 FR 10301; 68 FR 19596; 70 FR 25878; 68 FR 19598; 68 FR 33570; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 30997). Each of these 31 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 13, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed,

subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 31 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: June 5, 2007.

**Larry W. Minor,**

*Acting Associate Administrator, Policy and Program Development.*

[FR Doc. E7–11337 Filed 6–12–07; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2007–28452]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Federal Transit Administration invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection: Pre-Award and Post-Delivery Review Requirements. The information to be collected for this program is necessary to certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase revenue service vehicles. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on April 3, 2007.

**DATES:** Comments must be submitted before July 13, 2007. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* Pre-Award and Post-Delivery Review Requirements (*OMB Number: 2132–0544*).

*Abstract:* Under the Federal Transit Laws, at 49 U.S.C. 5323(m), grantees must certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase rolling stock and maintain on file these certifications. FTA implements this requirement in 49 CFR Part 663 by describing the certificates that must be submitted by each bidder to assure compliance with the Buy America contract specification and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(m).

*Estimated Total Annual Burden:* 3,024 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

*Comments are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued On: June 7, 2007.

**Ann M. Linnertz,**

*Acting Associate Administrator for Administration .*

[FR Doc. E7–11338 Filed 6–12–07; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 7, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 13, 2007 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–XXXX.

*Type of Review:* New.

*Title:* 990–N Electronic Notice (e-Postcard).

*Form:* 990–N.

*Description:* Section 1223 of the Pension Protection Act of 2006 (PPA '06), enacted on August 17, 2006, amended Internal Revenue Code (Code) section 6033 by adding Code section 6033(i), which requires certain tax-exempt organizations to file an annual electronic notice (Form 990–N) for tax years beginning after December 31, 2006. These organizations are not required to file Form 990 (or Form 990–EZ) because their gross receipts are normally $25,000 or less.

*Respondents:* Not-for-profit institutions.

*Estimated Total Burden Hours:* 1,300 hours.

*OMB Number:* 1545–1610.

*Type of Review:* Revision.

*Title:* Annual Return/Report of Employee Benefit Plan.

*Form:* 5500.

*Description:* Form 5500 is an annual information return filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 2,173,483 hours.

*OMB Number:* 1545–2061.

*Type of Review:* Revision.

*Title:* Supplemental Attachment to Schedule M–3.

*Form:* 8916–A.

*Description:* The Form 8916–A is a detailed schedule that reconciles the amount of the cost of goods sold, interest income and interest expense reported on Schedule M–3 for the Form 1065, Form 1120, 1120–S, 1120–L, or 1120–PC.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 5,049,720 hours.

*OMB Number:* 1545–1287.

*Type of Review:* Extension.

*Title:* FI–3–91 (Final) Capitalization of Certain Policy Acquisition Expenses.

*Description:* Insurance companies that enter into reinsurance agreement must determine the amounts to be capitalized under those agreements consistently. The regulations provide elections to permit companies to shift the burden of capitalization for their mutual benefit.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 2,070 hours.

*OMB Number:* 1545–0800.

*Type of Review:* Extension.

*Title:* Reg. 601.601 Rules and Regulations.

*Description:* Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal or a rule may submit a petition for this. IRS considers the petitions in its deliberations.

*Respondents:* Businesses, farms, and not-for-profit institutions.

*Estimated Total Burden Hours:* 900 hours.

*OMB Number:* 1545–0982.

*Type of Review:* Extension.

*Title:* LR–77–86 Temporary (TD 8124) Certain Elections Under the Tax Reform Act of 1986.

*Description:* These regulations establish various elections with respect to which immediate interim guidance on the time and manner of making the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 28,678 hours.

*OMB Number:* 1545–1443.

*Type of Review:* Extension.

*Title:* PS–25–94 (Final) Requirements to Ensure Collection of Section 2056A Estate Tax (TD 8686).

*Description:* The regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under Section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 6,070 hours.

*OMB Number:* 1545–0042.

*Type of Review:* Extension.

*Title:* Application To Use LIFO Inventory Method.

*Form:* 970.

*Description:* Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 24,800 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E7–11493 Filed 6–12–07; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 7, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 13, 2007 to be assured of consideration.

### Financial Crimes Enforcement Network (FinCEN)

*OMB Number:* 1506–0003.

*Type of Review:* Revision.

*Title:* Imposition of Special Measure Against Commercial Bank of Syria, Including its Subsidiary, Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern.

*Description:* This information will be used to verify compliance by financial institutions with the requirements to notify their correspondent account holders.

*Respondents:* Business and other for profit.

*Estimated Total Reporting Burden:* 5,000 hours.

*Clearance Officer:* Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E7–11494 Filed 6–12–07; 8:45 am]

BILLING CODE 4810–02–P

Federal Register

Wednesday,
June 13, 2007

# Part II

# Environmental Protection Agency

## 40 CFR Part 60

## Amendments to New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[EPA–HQ–OAR–2005–0031; FRL–8302–3]**

**RIN 2060–AN97**

# Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971; Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

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

**ACTION:** Final reconsideration.

**SUMMARY:** EPA is amending the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. These amendments to the regulations are to add compliance alternatives for owners and operators of certain affected sources, revise certain recordkeeping and reporting requirements, correct technical and editorial errors, and update the grammatical style of the four subparts to be more consistent across all of the subparts.

**DATES:** This rule is effective on June 13, 2007. The incorporation by reference of certain publications listed in these rules is approved by the Director of the Federal Register as of June 13, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0031. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, facsimile number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Outline.* The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
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F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

## I. General Information

### *A. Does this action apply to me?*

The regulated categories and entities potentially affected by this final action include, but are not limited to, the following:

| Category | NAICS code [1] | Examples of potentially regulated entities |
|---|---|---|
| Industry | 221112 | Fossil fuel-fired electric utility steam generating units. |
| Federal Government | 22112 | Fossil fuel-fired electric utility steam generating units owned by the Federal Government. |
| State/local/tribal government | 22112 | Fossil fuel-fired electric utility steam generating units owned by municipalities. |
| | 921150 | Fossil fuel-fired electric steam generating units in Indian Country. |
| Any industrial, commercial, or institutional facility using a steam generating unit as defined in 60.40b or 60.40c. | 211 | Extractors of crude petroleum and natural gas. |
| | 321 | Manufacturers of lumber and wood products. |
| | 322 | Pulp and paper mills. |
| | 325 | Chemical manufacturers. |
| | 324 | Petroleum refiners and manufacturers of coal products. |
| | 316, 326, 339 | Manufacturers of rubber and miscellaneous plastic products. |
| | 331 | Steel works, blast furnaces. |
| | 332 | Electroplating, plating, polishing, anodizing, and coloring. |
| | 336 | Manufacturers of motor vehicle parts and accessories. |
| | 221 | Electric, gas, and sanitary services. |
| | 622 | Health services. |
| | 611 | Educational Services. |

[1] North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 60.40a, 60.40b, or 60.40c of 40 CFR part 60. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your

EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

*B. Where can I get a copy of this document?*

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

*C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 13, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

## II. Background Information

In response to petitions for reconsideration filed by the Utility Air Regulatory Group and the Council of Industrial Boiler Owners of the amendments to the new source performance standards for steam generating units that EPA promulgated on February 27, 2006 (71 FR 9866), EPA proposed revised amendments to address issues for which the petitioners requested reconsideration (see docket entries EPA–HQ–OAR–2005–0031–0224 and EPA–HQ–OAR–2005–0031–0225). EPA proposed on February 9, 2007, (72 FR 6320) to amend 40 CFR part 60, subparts D, Da, Db, and Dc to clarify the intent for applying and implementing specific rule requirements, provide additional compliance alternatives, and to correct unintentional technical omissions and editorial errors. In addition, EPA proposed to republish 40 CFR 60.17 (Incorporations by reference) and subparts D, Da, Db, and Dc in their entirety for the purpose of revising the wording and writing style to be more consistent across all the NSPS subparts applicable to steam generating units.

A 30-day comment period (February 9, 2007 to March 12, 2007) was provided to accept comments on the proposed rule. An opportunity for a public hearing was provided to allow any interested persons to present oral comments on the proposed rule. However, EPA did not receive a request for a formal public hearing, so a public hearing was not held. EPA did receive a request for a 15-day extension to the comment period. EPA granted an extension of the public comment period to March 26, 2007 (72 FR 9903, March 6, 2007). We received comments on the proposed amendments from 20 commenters during the comment period.

## III. Final Amendments and Changes Since Proposal

We are amending 40 CFR part 60, subparts D, Da, Db, and Dc to add compliance alternatives for owners and operators of certain affected sources, revise certain recordkeeping and reporting requirements, correct technical and editorial errors, and update the grammatical style of the four subparts to be more consistent across all of the subparts. This action promulgates the proposed regulatory language for the amendments except for those significant provisions, as noted below, for which modifications were made to the regulatory language for the final amendments in response to specific public comments. EPA did not receive negative comments on the conforming changes to the regulatory text and is, therefore, finalizing all those changes.

The final amendments promulgated by this action reflect EPA's consideration of the comments received on the proposal. EPA's responses to the substantive public comments on the proposal are presented in a comment summary and response document available in Docket ID No. EPA–HQ–OAR–2005–0031.

The requirements in subpart Da for demonstrating continuous compliance with the particulate matter (PM) emission limits for affected electric utility steam generating units that commence construction, reconstruction, or modification after February 28, 2005, have been revised since proposal in response to comments. EPA is retaining the provision, established in the February 27, 2006 final rule, allowing the optional use of PM continuous emission monitoring systems (CEMS) to steam generating units for demonstration of compliance with rule requirements related to controlling PM emissions. Owners and operators choosing to install and properly operate PM CEMS must demonstrate compliance with the applicable PM emission limit on a daily basis and are not required to install a continuous opacity monitoring system (COMS) or to monitor PM control device performance.

We recognize that experience using PM CEMS at electric utility power plants in the United States is limited, and not all affected owners and operators will choose to use PM CEMS. Therefore, the final amendments allow owners and operators of affected electric utility steam generating units constructed, reconstructed, or modified after February 28, 2005, to demonstrate compliance with the PM emissions limit using periodic PM emissions performance testing and continuous monitoring of the PM control device performance using one of two alternatives. The first monitoring alternative is for an owner or operator of an affected source to monitor PM control device performance based on the opacity level measured during the stack performance test conducted to demonstrate compliance with the applicable PM emissions limit. The second alternative available to owners and operators depends on the type of PM control device used for the electric utility steam generating unit. The owner or operator of an affected source that uses an electrostatic precipitator (ESP) can elect to monitor performance of the control device using an ESP predictive emissions model. An owner or operator of an affected source that uses a fabric filter can elect to monitor control device performance using a bag leak detection system. One significant change from the proposal is that owners or operators of affected source that use parametric monitoring of PM emissions will have a grace period to bring the monitoring parameters back into the range established during the most recent PM emissions performance test prior to the requirement to conduct a new PM emissions performance test. The grace period does not apply to the 6-minute opacity standard and owners and operators of affected sources must continue to report excess 6-minute opacity measurements.

EPA has finalized several other alternatives to provide owners and operators of affected electric utility steam generating units additional flexibility in complying with the NSPS. EPA has finalized the optional use of Part 75 $NO_X$ and $SO_2$ CEMS calibration procedures to satisfy Part 60 requirements as proposed, the amendments to § 60.13 providing a standard methodology for validating partial operating hours, and the amendments to Appendix B of Part 60 allowing the calibration drift test be

conducted over 7 consecutive operating days instead of 7 consecutive calendar days and the relative accuracy test audit flexibility (as described in docket entry EPA–HQ–OAR–2005–0031–0234). In addition, EPA has finalized the option for steam generating units subject to subpart D allowing affected owners and operators to choose as an alternative to complying with the applicable $NO_X$ and $SO_2$ emission limits in the rule to comply with the 30-day average $NO_X$ and $SO_2$ standards for modified sources in subparts Da and Db, as applicable to the affected source.

For industrial/commercial/institutional steam generating units subject to subpart Db and burning coke oven gas (COG), we have expanded the applicability of the 30-day annual exemption from the $SO_2$ emissions limit to all units subject to subpart Db that burn COG. The amendments to subpart Db promulgated in February 27, 2006, added this flexibility for those steam generating units constructed, reconstructed, or modified after February 28, 2005, to account for byproduct plant maintenance. Based on comments we received, the amendments promulgated by this action provide the same compliance flexibility to the owner or operator of any COG-fired steam generating unit subject to subpart Db.

The final amendments add to subparts D, Da, Db, and Dc monitoring alternatives to existing requirements to use COMS for owners and operators of steam generating units burning gaseous fuels or low sulfur fuel oils. Owners and operators of electric utility steam generating units subject to subpart D or Da may elect to use a carbon monoxide (CO) CEMS in place of the COMS. Owners and operators of industrial/commercial/institutional steam generating units subject to subpart Db or Dc may elect to either use a CO CEMS or to operate according to a site-specific monitoring plan in place of using a COMS.

Finally, minor revisions to the proposed regulatory language were made to clarify specific provisions or to correct unintentional technical omissions and terminology, typographical, printing, and grammatical errors that were identified in the proposed rule. These changes include revising appropriate definitions and requirements in subpart Da to clarify the applicability and implementation of the subpart Da provisions to integrated coal gasification combined cycle electric utility power plants.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order. EPA has concluded that the amendments EPA is promulgating will not change the costs or benefits of the rule.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final amendments result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts D, Da, Db, and Dc) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). OMB assigned OMB control numbers 2060–0023 (ICR 1053.08) for 40 CFR part 60, subpart Da; 2060–0072 (ICR 1088.11) for 40 CFR part 60, subpart Db; 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. Copies of the information collection request document(s) may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

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

For purposes of assessing the impacts of the final amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this action will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA is reducing the fuel usage recordkeeping requirement for subpart Dc facilities. In addition, EPA is minimizing the continuous opacity monitoring requirements for certain oil-fired facilities. EPA has, therefore, concluded that this action will relieve regulatory burden for the majority of affected small entities. EPA continues to be interested in the potential impacts of the rule on small entities and welcomes comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final amendments will contain no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that the final amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the final amendments are not subject to the requirements of section 203 of the UMRA.

*E. Executive Order 13132: Federalism*

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

The final amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final amendments will not impose substantial direct compliance costs on State or local governments; it will not preempt State law. Thus, Executive Order 13132 does not apply to the final amendments.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final amendments do not have tribal implications, as specified in Executive Order 13175. While utility steam generating units are located on tribal lands EPA is not aware of any that are tribally owned. To the extend that institutional steam generating units are tribally owned the final amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final amendments.

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

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

This action is not subject to the Executive Order because it is not economically significant as defined under Executive Order 12866, and because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The final amendments are based on technology performance and not on health or safety risks and, therefore, are not subject to Executive Order 13045.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The final amendments are not a ''significant energy action'': As defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it only clarifies our intent and corrects errors in the existing rule. Further, we have concluded that the final amendments are not likely to have any adverse energy effects.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d)(15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these final amendments 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 final rules 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). These final amendments will be effective on June 13, 2007.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 13, 2007.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of the Federal Regulations is amended as follows:

## PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

## Subpart A—[Amended]

■ 2. Section 60.13 is amended by revising paragraph (h) to read as follows:

### § 60.13 Monitoring requirements.

* * * * *

(h)(1) Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to 6-minute averages and for continuous monitoring systems other than opacity to 1-hour averages for time periods as defined in § 60.2. Six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each 6-minute period.

(2) For continuous monitoring systems other than opacity, 1-hour averages shall be computed as follows, except that the provisions pertaining to the validation of partial operating hours are only applicable for affected facilities that are required by the applicable subpart to include partial hours in the emission calculations:

(i) Except as provided under paragraph (h)(2)(iii) of this section, for a full operating hour (any clock hour with 60 minutes of unit operation), at least four valid data points are required to calculate the hourly average, *i.e.*, one data point in each of the 15-minute quadrants of the hour.

(ii) Except as provided under paragraph (h)(2)(iii) of this section, for a partial operating hour (any clock hour with less than 60 minutes of unit operation), at least one valid data point in each 15-minute quadrant of the hour in which the unit operates is required to calculate the hourly average.

(iii) For any operating hour in which required maintenance or quality-assurance activities are performed:

(A) If the unit operates in two or more quadrants of the hour, a minimum of two valid data points, separated by at least 15 minutes, is required to calculate the hourly average; or

(B) If the unit operates in only one quadrant of the hour, at least one valid data point is required to calculate the hourly average.

(iv) If a daily calibration error check is failed during any operating hour, all data for that hour shall be invalidated, unless a subsequent calibration error test is passed in the same hour and the requirements of paragraph (h)(2)(iii) of this section are met, based solely on valid data recorded after the successful calibration.

(v) For each full or partial operating hour, all valid data points shall be used to calculate the hourly average.

(vi) Except as provided under paragraph (h)(2)(vii) of this section, data recorded during periods of continuous monitoring system breakdown, repair, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph.

(vii) Owners and operators complying with the requirements of § 60.7(f)(1) or (2) must include any data recorded during periods of monitor breakdown or malfunction in the data averages.

(viii) When specified in an applicable subpart, hourly averages for certain partial operating hours shall not be computed or included in the emission averages (*e.g.* hours with < 30 minutes of unit operation under § 60.47b(d)).

(ix) Either arithmetic or integrated averaging of all data may be used to calculate the hourly averages. The data may be recorded in reduced or nonreduced form (*e.g.*, ppm pollutant and percent $O_2$ or ng/J of pollutant).

(3) All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in the applicable subpart. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in the applicable subpart to specify the emission limit.

* * * * *

### § 60.17 [Amended]

■ 3. Section 60.17 is amended by revising paragraphs (a) and (h)(2) to read as follows:

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM A99–76, 82 (Reapproved 1987), Standard Specification for Ferromanganese, incorporation by reference (IBR) approved for § 60.261.

(2) ASTM A100–69, 74, 93, Standard Specification for Ferrosilicon, IBR approved for § 60.261.

(3) ASTM A101–73, 93, Standard Specification for Ferrochromium, IBR approved for § 60.261.

(4) ASTM A482–76, 93, Standard Specification for Ferrochromesilicon, IBR approved for § 60.261.

(5) ASTM A483–64, 74 (Reapproved 1988), Standard Specification for Silicomanganese, IBR approved for § 60.261.

(6) ASTM A495–76, 94, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon, IBR approved for § 60.261.

(7) ASTM D86–78, 82, 90, 93, 95, 96, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), and 60.633(h).

(8) ASTM D129–64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and Appendix A: Method 19, 12.5.2.2.3.

(9) ASTM D129–00 (Reapproved 2005), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for § 60.4415(a)(1)(i).

(10) ASTM D240–76, 92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for §§ 60.46(c), 60.296(b), and Appendix A: Method 19, Section 12.5.2.2.3.

(11) ASTM D270–65, 75, Standard Method of Sampling Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.1.

(12) ASTM D323–82, 94, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved for §§ 60.111(l), 60.111a(g), 60.111b(g), and 60.116b(f)(2)(ii).

(13) ASTM D388–77, 90, 91, 95, 98a, 99 (Reapproved 2004)$^{\varepsilon 1}$, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.24(h)(8), 60.41 of subpart D of this part, 60.45(f)(4)(i), 60.45(f)(4)(ii), 60.45(f)(4)(vi), 60.41Da of subpart Da of this part, 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, and 60.4102.

(14) ASTM D388–77, 90, 91, 95, 98a, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.251(b) and (c) of subpart Y of this part.

(15) ASTM D396–78, 89, 90, 92, 96, 98, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, 60.111(b) of subpart K of this part, and 60.111a(b) of subpart Ka of this part.

(16) ASTM D975–78, 96, 98a, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) of subpart K of this part and 60.111a(b) of subpart Ka of this part.

(17) ASTM D1072–80, 90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b)(10)(ii).

(18) ASTM D1072–90 (Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.4415(a)(1)(ii).

(19) ASTM D1137–53, 75, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer, IBR approved for § 60.45(f)(5)(i).

(20) ASTM D1193–77, 91, Standard Specification for Reagent Water, IBR approved for Appendix A: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; Method 26, Section 7.1.2; Method 26A, Section 7.1.2; and Method 29, Section 7.2.2.

(21) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

(22) ASTM D1266–98 (Reapproved 2003)e1, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for § 60.4415(a)(1)(i).

(23) ASTM D1475–60 (Reapproved 1980), 90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for § 60.435(d)(1), Appendix A: Method 24, Section 6.1; and Method 24A, Sections 6.5 and 7.1.

(24) ASTM D1552–83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and Appendix A: Method 19, Section 12.5.2.2.3.

(25) ASTM D1552–03, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for § 60.4415(a)(1)(i).

(26) ASTM D1826–77, 94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for §§ 60.45(f)(5)(ii), 60.46(c)(2), 60.296(b)(3), and Appendix A: Method 19, Section 12.3.2.4.

(27) ASTM D1835–87, 91, 97, 03a, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41Da of subpart Da of this part, 60.41b of subpart Db of this part, and 60.41c of subpart Dc of this part.

(28) ASTM D1945–64, 76, 91, 96, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f)(5)(i).

(29) ASTM D1946–77, 90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.18(f)(3), 60.45(f)(5)(i), 60.564(f)(1), 60.614(e)(2)(ii), 60.614(e)(4), 60.664(e)(2)(ii), 60.664(e)(4), 60.704(d)(2)(ii), and 60.704(d)(4).

(30) ASTM D2013–72, 86, Standard Method of Preparing Coal Samples for Analysis, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(31) ASTM D2015–77 (Reapproved 1978), 96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR approved for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(32) ASTM D2016–74, 83, Standard Test Methods for Moisture Content of Wood, IBR approved for Appendix A: Method 28, Section 16.1.1.

(33) ASTM D2234–76, 96, 97b, 98, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for Appendix A: Method 19, Section 12.5.2.1.1.

(34) ASTM D2369–81, 87, 90, 92, 93, 95, Standard Test Method for Volatile Content of Coatings, IBR approved for Appendix A: Method 24, Section 6.2.

(35) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(e)(4), 60.664(e)(4), and 60.704(d)(4).

(36) ASTM D2504–67, 77, 88 (Reapproved 1993), Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for § 60.485(g)(5).

(37) ASTM D2584–68 (Reapproved 1985), 94, Standard Test Method for Ignition Loss of Cured Reinforced Resins, IBR approved for § 60.685(c)(3)(i).

(38) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b)(9)(i).

(39) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

(40) ASTM D2622–05, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.4415(a)(1)(i).

(41) ASTM D2879–83, 96, 97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111b(f)(3), 60.116b(e)(3)(ii), 60.116b(f)(2)(i), and 60.485(e)(1).

(42) ASTM D2880–78, 96, Standard Specification for Gas Turbine Fuel Oils, IBR approved for §§ 60.111(b), 60.111a(b), and 60.335(d).

(43) ASTM D2908–74, 91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(44) ASTM D2986–71, 78, 95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for Appendix A: Method 5, Section 7.1.1; Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(45) ASTM D3173–73, 87, Standard Test Method for Moisture in the

Analysis Sample of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(46) ASTM D3176–74, 89, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved for § 60.45(f)(5)(i) and Appendix A: Method 19, Section 12.3.2.3.

(47) ASTM D3177–75, 89, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(48) ASTM D3178–73 (Reapproved 1979), 89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved for § 60.45(f)(5)(i).

(49) ASTM D3246–81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).

(50) ASTM D3246–05, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.4415(a)(1)(ii).

(51) ASTM D3270–73T, 80, 91, 95, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for Appendix A: Method 13A, Section 16.1.

(52) ASTM D3286–85, 96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(53) ASTM D3370–76, 95a, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

(54) ASTM D3792–79, 91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.3.

(55) ASTM D4017–81, 90, 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for Appendix A: Method 24, Section 6.4.

(56) ASTM D4057–81, 95, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.3.

(57) ASTM D4057–95 (Reapproved 2000), Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).

(58) ASTM D4084–82, 94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h)(1).

(59) ASTM D4084–05, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for §§ 60.4360 and 60.4415(a)(1)(ii).

(60) ASTM D4177–95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.1.

(61) ASTM D4177–95 (Reapproved 2000), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).

(62) ASTM D4239–85, 94, 97, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(63) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.335(b)(10)(i).

(64) ASTM D4294–03, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.4415(a)(1)(i).

(65) ASTM D4442–84, 92, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials, IBR approved for Appendix A: Method 28, Section 16.1.1.

(66) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, IBR approved for Appendix A: Method 28, Section 16.1.1.

(67) ASTM D4457–85 (Reapproved 1991), Test Method for Determination of Dichloromethane and 1, 1, 1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.5.

(68) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for §§ 60.335(b)(10)(ii) and 60.4415(a)(1)(ii).

(69) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR approved for §§ 60.49b(e) and 60.335(b)(9)(i).

(70) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(d)(4), 60.664(e)(4), and 60.704(d)(4).

(71) ASTM D4810–88 (Reapproved 1999), Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length of Stain Detector Tubes, IBR approved for §§ 60.4360 and 60.4415(a)(1)(ii).

(72) ASTM D5287–97 (Reapproved 2002), Standard Practice for Automatic Sampling of Gaseous Fuels, IBR approved for § 60.4415(a)(1).

(73) ASTM D5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials, IBR approved for Appendix A: Method 24, Section 6.6.

(74) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(i).

(75) ASTM D5453–05, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.4415(a)(1)(i).

(76) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for §§ 60.334(h)(1) and 60.4360.

(77) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b)(9)(i).

(78) ASTM D5865–98, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(79) ASTM D6216–98, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, IBR approved for Appendix B, Performance Specification 1.

(80) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).

(81) ASTM D6228–98 (Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for §§ 60.4360 and 60.4415.

(82) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared

(FTIR) Spectroscopy, IBR approved for table 7 of Subpart IIII of this part.

(83) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9)(i).

(84) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(85) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(ii).

(86) ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.4415(a)(1)(ii).

(87) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), IBR approved for Appendix B to part 60, Performance Specification 12A, Section 8.6.2.

(88) ASTM E168–67, 77, 92, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(89) ASTM E169–63, 77, 93, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(90) ASTM E260–73, 91, 96, General Gas Chromatography Procedures, IBR approved for §§ 60.593(b)(2) and 60.632(f).

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(h) * * *

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b of subpart Db of this part, 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 60.1320(a)(3) and 60.1810(a)(3).

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## Subpart D—[Amended]

■ 4. Part 60 is amended by revising subpart D to read as follows:

### Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971

Sec.

60.40 Applicability and designation of affected facility.
60.41 Definitions.
60.42 Standard for particulate matter (PM).
60.43 Standard for sulfur dioxide ($SO_2$).
60.44 Standard for nitrogen oxides ($NO_X$).
60.45 Emission and fuel monitoring.
60.46 Test methods and procedures.

### Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971

#### § 60.40 Applicability and designation of affected facility.

(a) The affected facilities to which the provisions of this subpart apply are:

(1) Each fossil-fuel-fired steam generating unit of more than 73 megawatts (MW) heat input rate (250 million British thermal units per hour (MMBtu/hr)).

(2) Each fossil-fuel and wood-residue-fired steam generating unit capable of firing fossil fuel at a heat input rate of more than 73 MW (250 MMBtu/hr).

(b) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels as defined in this subpart, shall not bring that unit under the applicability of this subpart.

(c) Except as provided in paragraph (d) of this section, any facility under paragraph (a) of this section that commenced construction or modification after August 17, 1971, is subject to the requirements of this subpart.

(d) The requirements of §§ 60.44 (a)(4), (a)(5), (b) and (d), and 60.45(f)(4)(vi) are applicable to lignite-fired steam generating units that commenced construction or modification after December 22, 1976.

(e) Any facility covered under subpart Da is not covered under this subpart.

#### § 60.41 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, and in subpart A of this part.

*Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D388 (incorporated by reference, see § 60.17).

*Coal refuse* means waste-products of coal mining, cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

*Fossil fuel* means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.

*Fossil fuel and wood residue-fired steam generating unit* means a furnace or boiler used in the process of burning fossil fuel and wood residue for the purpose of producing steam by heat transfer.

*Fossil-fuel-fired steam generating unit* means a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.

*Wood residue* means bark, sawdust, slabs, chips, shavings, mill trim, and other wood products derived from wood processing and forest management operations.

#### § 60.42 Standard for particulate matter (PM).

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that:

(1) Contain PM in excess of 43 nanograms per joule (ng/J) heat input (0.10 lb/MMBtu) derived from fossil fuel or fossil fuel and wood residue.

(2) Exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.

(b)(1) On or after December 28, 1979, no owner or operator shall cause to be discharged into the atmosphere from the Southwestern Public Service Company's Harrington Station #1, in Amarillo, TX, any gases which exhibit greater than 35 percent opacity, except that a maximum or 42 percent opacity shall be permitted for not more than 6 minutes in any hour.

(2) Interstate Power Company shall not cause to be discharged into the atmosphere from its Lansing Station Unit No. 4 in Lansing, IA, any gases which exhibit greater than 32 percent opacity, except that a maximum of 39 percent opacity shall be permitted for not more than six minutes in any hour.

#### § 60.43 Standard for sulfur dioxide ($SO_2$).

(a) Except as provided under paragraph (d) of this section, on and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that contain $SO_2$ in excess of:

(1) 340 ng/J heat input (0.80 lb/MMBtu) derived from liquid fossil fuel or liquid fossil fuel and wood residue.

(2) 520 ng/J heat input (1.2 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue, except as provided in paragraph (e) of this section.

(b) Except as provided under paragraph (d) of this section, when different fossil fuels are burned simultaneously in any combination, the applicable standard (in ng/J) shall be determined by proration using the following formula:

$$PS_{SO_2} = \frac{y\ (340) + z\ (520)}{(y + z)}$$

Where:

$PS_{SO_2}$ = Prorated standard for $S_{O2}$ when burning different fuels simultaneously, in ng/J heat input derived from all fossil fuels or from all fossil fuels and wood residue fired;

y = Percentage of total heat input derived from liquid fossil fuel; and

z = Percentage of total heat input derived from solid fossil fuel.

(c) Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.

(d) As an alternate to meeting the requirements of paragraphs (a) and (b) of this section, an owner or operator can petition the Administrator (in writing) to comply with § 60.43Da(i)(3) of subpart Da of this part or comply with § 60.42b(k) of subpart Db of this part, as applicable to the affected source. If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.43Da(i)(3) of subpart Da of this part or § 60.42b(k) of subpart Db of this part, as applicable to the affected source.

(e) Units 1 and 2 (as defined in appendix G of this part) at the Newton Power Station owned or operated by the Central Illinois Public Service Company will be in compliance with paragraph (a)(2) of this section if Unit 1 and Unit 2 individually comply with paragraph (a)(2) of this section or if the combined emission rate from Units 1 and 2 does not exceed 470 ng/J (1.1 lb/MMBtu) combined heat input to Units 1 and 2.

### § 60.44 Standard for nitrogen oxides ($NO_X$).

(a) Except as provided under paragraph (e) of this section, on and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that contain $NO_X$, expressed as $NO_2$ in excess of:

(1) 86 ng/J heat input (0.20 lb/MMBtu) derived from gaseous fossil fuel.

(2) 129 ng/J heat input (0.30 lb/MMBtu) derived from liquid fossil fuel, liquid fossil fuel and wood residue, or gaseous fossil fuel and wood residue.

(3) 300 ng/J heat input (0.70 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue (except lignite or a solid fossil fuel containing 25 percent, by weight, or more of coal refuse).

(4) 260 ng/J heat input (0.60 lb MMBtu) derived from lignite or lignite and wood residue (except as provided under paragraph (a)(5) of this section).

(5) 340 ng/J heat input (0.80 lb MMBtu) derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fired unit.

(b) Except as provided under paragraphs (c), (d), and (e) of this section, when different fossil fuels are burned simultaneously in any combination, the applicable standard (in ng/J) is determined by proration using the following formula:

$$PS_{NO_X} = \frac{w\ (260) + x\ (86) + y\ (130) + z\ (300)}{(w + x + y + z)}$$

Where:

$PS_{NOx}$ = Prorated standard for $NO_X$ when burning different fuels simultaneously, in ng/J heat input derived from all fossil fuels fired or from all fossil fuels and wood residue fired;

w = Percentage of total heat input derived from lignite;

x = Percentage of total heat input derived from gaseous fossil fuel;

y = Percentage of total heat input derived from liquid fossil fuel; and

z = Percentage of total heat input derived from solid fossil fuel (except lignite).

(c) When a fossil fuel containing at least 25 percent, by weight, of coal refuse is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, the standard for $NO_X$ does not apply.

(d) Except as provided under paragraph (e) of this section, cyclone-fired units which burn fuels containing at least 25 percent of lignite that is mined in North Dakota, South Dakota, or Montana remain subject to paragraph (a)(5) of this section regardless of the types of fuel combusted in combination with that lignite.

(e) As an alternate to meeting the requirements of paragraphs (a), (b), and (d) of this section, an owner or operator can petition the Administrator (in writing) to comply with § 60.44Da(e)(3) of subpart Da of this part. If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.44Da(e)(3) of subpart Da of this part.

### § 60.45 Emissions and fuel monitoring.

(a) Each owner or operator shall install, calibrate, maintain, and operate continuous emissions monitoring systems (CEMS) for measuring the opacity of emissions, $SO_2$ emissions, $NO_X$ emissions, and either oxygen ($O_2$) or carbon dioxide ($CO_2$) except as provided in paragraph (b) of this section.

(b) Certain of the CEMS requirements under paragraph (a) of this section do not apply to owners or operators under the following conditions:

(1) For a fossil-fuel-fired steam generator that burns only gaseous fossil fuel and that does not use post-combustion technology to reduce emissions of $SO_2$ or PM, CEMS for measuring the opacity of emissions and $SO_2$ emissions are not required.

(2) For a fossil-fuel-fired steam generator that does not use a flue gas desulfurization device, a CEMS for measuring $SO_2$ emissions is not required if the owner or operator monitors $SO_2$ emissions by fuel sampling and analysis.

(3) Notwithstanding § 60.13(b), installation of a CEMS for $NO_X$ may be delayed until after the initial performance tests under § 60.8 have been conducted. If the owner or operator demonstrates during the performance test that emissions of $NO_X$ are less than 70 percent of the applicable standards in § 60.44, a CEMS for measuring $NO_X$ emissions is not required. If the initial performance test results show that $NO_X$ emissions are greater than 70 percent of the applicable standard, the owner or operator shall install a CEMS for $NO_X$ within one year after the date of the initial performance

tests under § 60.8 and comply with all other applicable monitoring requirements under this part.

(4) If an owner or operator does not install any CEMS for sulfur oxides and $NO_X$, as provided under paragraphs (b)(1) and (b)(3) or paragraphs (b)(2) and (b)(3) of this section a CEMS for measuring either $O_2$ or $CO_2$ is not required.

(5) An owner or operator may petition the Administrator (in writing) to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.

(6) A CEMS for measuring the opacity of emissions is not required for a fossil fuel-fired steam generator that does not use post-combustion technology (except a wet scrubber) for reducing PM, $SO_2$, or carbon monoxide (CO) emissions, burns only gaseous fuels or fuel oils that contain less than or equal to 0.30 weight percent sulfur, and is operated such that emissions of CO to the atmosphere from the affected source are maintained at levels less than or equal to 0.15 lb/MMBtu on a boiler operating day average basis. Owners and operators of affected sources electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (b)(6)(i) through (iv) of this section.

(i) You must monitor CO emissions using a CEMS according to the procedures specified in paragraphs (b)(6)(i)(A) through (D) of this section.

(A) The CO CEMS must be installed, certified, maintained, and operated according to the provisions in § 60.58b(i)(3) of subpart Eb of this part.

(B) Each 1-hour CO emissions average is calculated using the data points generated by the CO CEMS expressed in parts per million by volume corrected to 3 percent oxygen (dry basis).

(C) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. At least two data points per hour must be used to calculate each 1-hour average.

(D) Quarterly accuracy determinations and daily calibration drift tests for the CO CEMS must be performed in accordance with procedure 1 in appendix F of this part.

(ii) You must calculate the 1-hour average CO emissions levels for each boiler operating day by multiplying the average hourly CO output concentration measured by the CO CEMS times the corresponding average hourly flue gas flow rate and divided by the corresponding average hourly heat input to the affected source. The 24-hour average CO emission level is determined by calculating the arithmetic average of the hourly CO emission levels computed for each boiler operating day.

(iii) You must evaluate the preceding 24-hour average CO emission level each boiler operating day excluding periods of affected source startup, shutdown, or malfunction. If the 24-hour average CO emission level is greater than 0.15 lb/MMBtu, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high emission incident and, take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the 24-hour average CO emission level to 0.15 lb/MMBtu or less.

(iv) You must record the CO measurements and calculations performed according to paragraph (b)(6) of this section and any corrective actions taken. The record of corrective action taken must include the date and time during which the 24-hour average CO emission level was greater than 0.15 lb/MMBtu, and the date, time, and description of the corrective action.

(c) For performance evaluations under § 60.13(c) and calibration checks under § 60.13(d), the following procedures shall be used:

(1) Methods 6, 7, and 3B of appendix A of this part, as applicable, shall be used for the performance evaluations of $SO_2$ and $NO_X$ continuous monitoring systems. Acceptable alternative methods for Methods 6, 7, and 3B of appendix A of this part are given in § 60.46(d).

(2) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 of appendix B to this part.

(3) For affected facilities burning fossil fuel(s), the span value for a continuous monitoring system measuring the opacity of emissions shall be 80, 90, or 100 percent. For a continuous monitoring system measuring sulfur oxides or $NO_X$ the span value shall be determined using one of the following procedures:

(i) Except as provided under paragraph (c)(3)(ii) of this section, $SO_2$ and $NO_X$ span values shall be determined as follows:

| Fossil fuel | In parts per million | |
|---|---|---|
| | Span value for $SO_2$ | Span value for $NO_X$ |
| Gas | ([1]) | 500. |
| Liquid | 1,000 | 500. |
| Solid | 1,500 | 1,000. |
| Combinations | 1,000y + 1,500z | 500 (x + y) + 1,000z. |

[1] Not applicable.

Where:

x = Fraction of total heat input derived from gaseous fossil fuel;

y = Fraction of total heat input derived from liquid fossil fuel; and

z = Fraction of total heat input derived from solid fossil fuel.

(ii) As an alternative to meeting the requirements of paragraph (c)(3)(i) of this section, the owner or operator of an affected facility may elect to use the $SO_2$ and $NO_X$ span values determined according to sections 2.1.1 and 2.1.2 in appendix A to part 75 of this chapter.

(4) All span values computed under paragraph (c)(3)(i) of this section for burning combinations of fossil fuels shall be rounded to the nearest 500 ppm. Span values that are computed under paragraph (c)(3)(ii) of this section shall be rounded off according to the applicable procedures in section 2 of appendix A to part 75 of this chapter.

(5) For a fossil-fuel-fired steam generator that simultaneously burns fossil fuel and nonfossil fuel, the span value of all CEMS shall be subject to the Administrator's approval.

(d) [Reserved]

(e) For any CEMS installed under paragraph (a) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable standards (ng/J, lb/MMBtu):

(1) When a CEMS for measuring $O_2$ is selected, the measurement of the pollutant concentration and $O_2$ concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the Administrator shall be used when measurements are on a wet basis. When measurements are on a dry basis, the

following conversion procedure shall be used:

$$E = CF\left(\frac{20.9}{(20.9 - \%O_2)}\right)$$

Where E, C, F, and $\%O_2$ are determined under paragraph (f) of this section.

(2) When a CEMS for measuring $CO_2$ is selected, the measurement of the pollutant concentration and $CO_2$ concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used:

$$E = CF_c\left(\frac{100}{\%CO_2}\right)$$

Where E, C, $F_c$ and $\%CO_2$ are determined under paragraph (f) of this section.

(f) The values used in the equations under paragraphs (e)(1) and (2) of this section are derived as follows:

(1) E = pollutant emissions, ng/J (lb/MMBtu).

(2) C = pollutant concentration, ng/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each one-hour period by $4.15 \times 10^4$ M ng/dscm per ppm ($2.59 \times 10^{-9}$ M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole). M = 64.07 for $SO_2$ and 46.01 for $NO_X$.

(3) $\%O_2$, $\%CO_2$ = $O_2$ or $CO_2$ volume (expressed as percent), determined with equipment specified under paragraph (a) of this section.

(4) F, $F_c$ = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of $CO_2$ generated to the calorific value of the fuel combusted ($F_c$), respectively. Values of F and $F_c$ are given as follows:

(i) For anthracite coal as classified according to ASTM D388 (incorporated by reference, see § 60.17), F = $2{,}723 \times 10^{-17}$ dscm/J (10,140 dscf/MMBtu) and $F_c = 0.532 \times 10^{-17}$ scm $CO_2$/J (1,980 scf $CO_2$/MMBtu).

(ii) For subbituminous and bituminous coal as classified according to ASTM D388 (incorporated by reference, see § 60.17), F = $2.637 \times 10^{-7}$ dscm/J (9,820 dscf/MMBtu) and $F_c = 0.486 \times 10^{-7}$ scm $CO_2$/J (1,810 scf $CO_2$/MMBtu).

(iii) For liquid fossil fuels including crude, residual, and distillate oils, F = $2.476 \times 10^{-7}$ dscm/J (9,220 dscf/MMBtu) and $F_c = 0.384 \times 10^{-7}$ scm $CO_2$/J (1,430 scf $CO_2$/MMBtu).

(iv) For gaseous fossil fuels, F = $2.347 \times 10^{-7}$ dscm/J (8,740 dscf/MMBtu). For natural gas, propane, and butane fuels, $F_c = 0.279 \times 10^{-7}$ scm $CO_2$/J (1,040 scf $CO_2$/MMBtu) for natural gas, $0.322 \times 10^{-7}$ scm $CO_2$/J (1,200 scf $CO_2$/MMBtu) for propane, and $0.338 \times 10^{-7}$ scm $CO_2$/J (1,260 scf $CO_2$/MMBtu) for butane.

(v) For bark F = $2.589 \times 10^{-7}$ dscm/J (9,640 dscf/MMBtu) and $F_c = 0.500 \times 10^{-7}$ scm $CO_2$/J (1,840 scf $CO_2$/MMBtu). For wood residue other than bark F = $2.492 \times 10^{-7}$ dscm/J (9,280 dscf/MMBtu) and $F_c = 0.494 \times 10^{-7}$ scm $CO_2$/J (1,860 scf $CO_2$/MMBtu).

(vi) For lignite coal as classified according to ASTM D388 (incorporated by reference, see § 60.17), F = $2.659 \times 10^{-7}$ dscm/J (9,900 dscf/MMBtu) and $F_c = 0.516 \times 10^{-7}$ scm $CO_2$/J (1,920 scf $CO_2$/MMBtu).

(5) The owner or operator may use the following equation to determine an F factor (dscm/J or dscf/MMBtu) on a dry basis (if it is desired to calculate F on a wet basis, consult the Administrator) or Fc factor (scm $CO_2$/J, or scf $CO_2$/MMBtu) on either basis in lieu of the F or $F_c$ factors specified in paragraph (f)(4) of this section:

$$F = 10^{-6}\,\frac{[227.2\,(\%H) + 95.5\,(\%C) + 35.6\,(\%S) + 8.7\,(\%N) - 28.7\,(\%O)]}{GCV}$$

$$F_c = \frac{2.0\times10^{-5}(\%C)}{GCV\ (SI\ units)}$$

$$F = 10^{-6}\,\frac{[3.64\,(\%H) + 1.53\,(\%C) + 0.57\,(\%S) + 0.14\,(\%N) - 0.46\,(\%O)]}{GCV\ (English\ units)}$$

$$F_c = \frac{20.0\,(\%C)}{GCV\ (SI\ units)}$$

$$F_c = \frac{321\times10^{3}\,(\%C)}{GCV\ (English\ units)}$$

(i) %H, %C, %S, %N, and %O are content by weight of hydrogen, carbon, sulfur, nitrogen, and $O_2$ (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired, using ASTM D3178 or D3176 (solid fuels), or computed from results using ASTM D1137, D1945, or D1946 (gaseous fuels) as applicable. (These five methods are incorporated by reference, see § 60.17.)

(ii) GVC is the gross calorific value (kJ/kg, Btu/lb) of the fuel combusted determined by the ASTM test methods D2015 or D5865 for solid fuels and D1826 for gaseous fuels as applicable. (These three methods are incorporated by reference, see § 60.17.)

(iii) For affected facilities which fire both fossil fuels and nonfossil fuels, the F or Fc value shall be subject to the Administrator's approval.

(6) For affected facilities firing combinations of fossil fuels or fossil fuels and wood residue, the F or Fc factors determined by paragraphs (f)(4) or (f)(5) of this section shall be prorated in accordance with the applicable formula as follows:

$$F = \sum_{i=1}^{n} X_i F_i \quad \text{or} \quad F_c = \sum_{i=1}^{n} X_i (F_c)_i$$

Where:

$X_i$ = Fraction of total heat input derived from each type of fuel (e.g. natural gas, bituminous coal, wood residue, etc.);
$F_i$ or $(F_c)_i$ = Applicable F or $F_c$ factor for each fuel type determined in accordance with paragraphs (f)(4) and (f)(5) of this section; and
n = Number of fuels being burned in combination.

(g) Excess emission and monitoring system performance reports shall be submitted to the Administrator semiannually for each six-month period in the calendar year. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period. Each excess emission and MSP report shall include the information required in § 60.7(c). Periods of excess emissions and monitoring systems (MS) downtime that shall be reported are defined as follows:

(1) *Opacity*. Excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 20 percent opacity, except that one six-minute average per hour of up to 27 percent opacity need not be reported.

(i) For sources subject to the opacity standard of § 60.42(b)(1), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 35 percent opacity, except that one six-minute average per hour of up to 42 percent opacity need not be reported.

(ii) For sources subject to the opacity standard of § 60.42(b)(2), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 32 percent opacity, except that one six-minute average per hour of up to 39 percent opacity need not be reported.

(2) *Sulfur dioxide*. Excess emissions for affected facilities are defined as:

(i) Any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) of $SO_2$ as measured by a CEMS exceed the applicable standard under § 60.43, or

(ii) Any 30 operating day period during which the average emissions (arithmetic average of all one-hour periods during the 30 operating days) of $SO_2$ as measured by a CEMS exceed the applicable standard under § 60.43. Facilities complying with the 30-day $SO_2$ standard shall use the most current associated $SO_2$ compliance and monitoring requirements in §§ 60.48Da and 60.49Da of subpart Da of this part.

(3) *Nitrogen oxides*. Excess emissions for affected facilities using a CEMS for measuring $NO_X$ are defined as:

(i) Any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) exceed the applicable standards under § 60.44, or

(ii) Any 30 operating day period during which the average emissions (arithmetic average of all one-hour periods during the 30 operating days) of $NO_X$ as measured by a CEMS exceed the applicable standard under § 60.43. Facilities complying with the 30-day $NO_X$ standard shall use the most current associated $NO_X$ compliance and monitoring requirements in §§ 60.48Da and 60.49Da of subpart Da of this part.

(4) *Particulate matter*. Excess emissions for affected facilities using a CEMS for measuring PM are defined as any boiler operating day period during which the average emissions (arithmetic average of all operating one-hour periods) exceed the applicable standards under § 60.43. Affected facilities using PM CEMS in lieu of a CEMS for monitoring opacity emissions must follow the most current applicable compliance and monitoring provisions in §§ 60.48Da and 60.49Da of subpart Da of this part.

**§ 60.46 Test methods and procedures.**

(a) In conducting the performance tests required in § 60.8, and subsequent performance tests as requested by the EPA Administrator, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (d) of this section.

(b) The owner or operator shall determine compliance with the PM, $SO_2$, and $NO_X$ standards in §§ 60.42, 60.43, and 60.44 as follows:

(1) The emission rate (E) of PM, $SO_2$, or $NO_X$ shall be computed for each run using the following equation:

$$E = CF_d\left(\frac{20.9}{(20.9 - \%O_2)}\right)$$

Where:
E = Emission rate of pollutant, ng/J (1b/million Btu);
C = Concentration of pollutant, ng/dscm (1b/dscf);
$\%O_2$ = $O_2$ concentration, percent dry basis; and
$F_d$ = Factor as determined from Method 19 of appendix A of this part.

(2) Method 5 of appendix A of this part shall be used to determine the PM concentration (C) at affected facilities without wet flue-gas-desulfurization (FGD) systems and Method 5B of appendix A of this part shall be used to determine the PM concentration (C) after FGD systems.

(i) The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). The probe and filter holder heating systems in the sampling train shall be set to provide an average gas temperature of 160±14 °C (320±25 °F).

(ii) The emission rate correction factor, integrated or grab sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration ($\%O_2$). The $O_2$ sample shall be obtained simultaneously with, and at the same traverse points as, the particulate sample. If the grab sampling procedure is used, the $O_2$ concentration for the run shall be the arithmetic mean of the sample $O_2$ concentrations at all traverse points.

(iii) If the particulate run has more than 12 traverse points, the $O_2$ traverse points may be reduced to 12 provided that Method 1 of appendix A of this part is used to locate the 12 $O_2$ traverse points.

(3) Method 9 of appendix A of this part and the procedures in § 60.11 shall be used to determine opacity.

(4) Method 6 of appendix A of this part shall be used to determine the $SO_2$ concentration.

(i) The sampling site shall be the same as that selected for the particulate sample. The sampling location in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). The sampling time and sample volume for each sample run shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Two samples shall be taken during a 1-hour period, with each sample taken within a 30-minute interval.

(ii) The emission rate correction factor, integrated sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration ($\%O_2$). The $O_2$ sample shall be taken simultaneously with, and at the same point as, the $SO_2$ sample. The $SO_2$ emission rate shall be computed for each pair of $SO_2$ and $O_2$ samples. The $SO_2$ emission rate (E) for each run shall be the arithmetic mean of the results of the two pairs of samples.

(5) Method 7 of appendix A of this part shall be used to determine the $NO_X$ concentration.

(i) The sampling site and location shall be the same as for the $SO_2$ sample. Each run shall consist of four grab samples, with each sample taken at about 15-minute intervals.

(ii) For each $NO_X$ sample, the emission rate correction factor, grab sampling and analysis procedure of

Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration (%$O_2$). The sample shall be taken simultaneously with, and at the same point as, the $NO_X$ sample.

(iii) The $NO_X$ emission rate shall be computed for each pair of $NO_X$ and $O_2$ samples. The $NO_X$ emission rate (E) for each run shall be the arithmetic mean of the results of the four pairs of samples.

(c) When combinations of fossil fuels or fossil fuel and wood residue are fired, the owner or operator (in order to compute the prorated standard as shown in §§ 60.43(b) and 60.44(b)) shall determine the percentage (w, x, y, or z) of the total heat input derived from each type of fuel as follows:

(1) The heat input rate of each fuel shall be determined by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned.

(2) ASTM Methods D2015, or D5865 (solid fuels), D240 (liquid fuels), or D1826 (gaseous fuels) (all of these methods are incorporated by reference, see § 60.17) shall be used to determine the gross calorific values of the fuels. The method used to determine the calorific value of wood residue must be approved by the Administrator.

(3) Suitable methods shall be used to determine the rate of each fuel burned during each test period, and a material balance over the steam generating system shall be used to confirm the rate.

(d) The owner or operator may use the following as alternatives to the reference methods and procedures in this section or in other sections as specified:

(1) The emission rate (E) of PM, $SO_2$ and $NO_X$ may be determined by using the Fc factor, provided that the following procedure is used:

(i) The emission rate (E) shall be computed using the following equation:

$$E = CF_c \left( \frac{100}{\%CO_2} \right)$$

Where:

E = Emission rate of pollutant, ng/J (lb/MMBtu);

C = Concentration of pollutant, ng/dscm (lb/dscf);

%$CO_2$ = $CO_2$ concentration, percent dry basis; and

$F_c$ = Factor as determined in appropriate sections of Method 19 of appendix A of this part.

(ii) If and only if the average Fc factor in Method 19 of appendix A of this part is used to calculate E and either E is from 0.97 to 1.00 of the emission standard or the relative accuracy of a continuous emission monitoring system is from 17 to 20 percent, then three runs of Method 3B of appendix A of this part shall be used to determine the $O_2$ and $CO_2$ concentration according to the procedures in paragraph (b)(2)(ii), (4)(ii), or (5)(ii) of this section. Then if $F_o$ (average of three runs), as calculated from the equation in Method 3B of appendix A of this part, is more than ±3 percent than the average $F_o$ value, as determined from the average values of $F_d$ and $F_c$ in Method 19 of appendix A of this part, *i.e.*, $F_{oa} = 0.209 (F_{da}/F_{ca})$, then the following procedure shall be followed:

(A) When $F_o$ is less than 0.97 $F_{oa}$, then E shall be increased by that proportion under 0.97 $F_{oa}$, *e.g.*, if $F_o$ is 0.95 $F_{oa}$, E shall be increased by 2 percent. This recalculated value shall be used to determine compliance with the emission standard.

(B) When $F_o$ is less than 0.97 $F_{oa}$ and when the average difference (d) between the continuous monitor minus the reference methods is negative, then E shall be increased by that proportion under 0.97 $F_{oa}$, *e.g.*, if $F_o$ is 0.95 $F_{oa}$, E shall be increased by 2 percent. This recalculated value shall be used to determine compliance with the relative accuracy specification.

(C) When $F_o$ is greater than 1.03 $F_{oa}$ and when the average difference d is positive, then E shall be decreased by that proportion over 1.03 $F_{oa}$, *e.g.*, if $F_o$ is 1.05 $F_{oa}$, E shall be decreased by 2 percent. This recalculated value shall be used to determine compliance with the relative accuracy specification.

(2) For Method 5 or 5B of appendix A of this part, Method 17 of appendix A of this part may be used at facilities with or without wet FGD systems if the stack gas temperature at the sampling location does not exceed an average temperature of 16 0°C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B of appendix A of this part may be used with Method 17 of appendix A of this part only if it is used after wet FGD systems. Method 17 of appendix A of this part shall not be used after wet FGD systems if the effluent gas is saturated or laden with water droplets.

(3) Particulate matter and $SO_2$ may be determined simultaneously with the Method 5 of appendix A of this part train provided that the following changes are made:

(i) The filter and impinger apparatus in sections 2.1.5 and 2.1.6 of Method 8 of appendix A of this part is used in place of the condenser (section 2.1.7) of Method 5 of appendix A of this part.

(ii) All applicable procedures in Method 8 of appendix A of this part for the determination of $SO_2$ (including moisture) are used:

(4) For Method 6 of appendix A of this part, Method 6C of appendix A of this part may be used. Method 6A of appendix A of this part may also be used whenever Methods 6 and 3B of appendix A of this part data are specified to determine the $SO_2$ emission rate, under the conditions in paragraph (d)(1) of this section.

(5) For Method 7 of appendix A of this part, Method 7A, 7C, 7D, or 7E of appendix A of this part may be used. If Method 7C, 7D, or 7E of appendix A of this part is used, the sampling time for each run shall be at least 1 hour and the integrated sampling approach shall be used to determine the $O_2$ concentration (%$O_2$) for the emission rate correction factor.

(6) For Method 3 of appendix A of this part, Method 3A or 3B of appendix A of this part may be used.

(7) For Method 3B of appendix A of this part, Method 3A of appendix A of this part may be used.

## Subpart Da—[Amended]

■ 4a. Subpart Da is revised as follows:

### Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978

Sec.

60.40Da Applicability and designation of affected facility.
60.41Da Definitions.
60.42Da Standard for particulate matter (PM).
60.43Da Standard for sulfur dioxide ($SO_2$).
60.44Da Standard for nitrogen oxides ($NO_X$).
60.45Da Standard for mercury (Hg).
60.46Da [Reserved]
60.47Da Commercial demonstration permit.
60.48Da Compliance provisions.
60.49Da Emission monitoring.
60.50Da Compliance determination procedures and methods.
60.51Da Reporting requirements.
60.52Da Recordkeeping requirements.

## Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978

### § 60.40Da Applicability and designation of affected facility.

(a) The affected facility to which this subpart applies is each electric utility steam generating unit:

(1) That is capable of combusting more than 73 megawatts (MW) (250 million British thermal units per hour (MMBtu/hr) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) For which construction, modification, or reconstruction is commenced after September 18, 1978.

(b) Combined cycle gas turbines (both the stationary combustion turbine and any associated duct burners) are subject to this part and not subject to subpart GG or KKKK of this part if:

(1) The combined cycle gas turbine is capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) The combined cycle gas turbine is designed and intended to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas on a 12-month rolling average basis; and

(3) The combined cycle gas turbine commenced construction, modification, or reconstruction after February 28, 2005.

(4) This subpart will continue to apply to all other electric utility combined cycle gas turbines that are capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel in the heat recovery steam generator. If the heat recovery steam generator is subject to this subpart and the stationary combustion turbine is subject to either subpart GG or KKKK of this part, only emissions resulting from combustion of fuels in the steam-generating unit are subject to this subpart. (The stationary combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(c) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels, shall not bring that unit under the applicability of this subpart.

(d) Any change to an existing steam generating unit originally designed to fire gaseous or liquid fossil fuels, to accommodate the use of any other fuel (fossil or nonfossil) shall not bring that unit under the applicability of this subpart.

**§ 60.41Da Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

*Anthracite* means coal that is classified as anthracite according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Available purchase power* means the lesser of the following:

(a) The sum of available system capacity in all neighboring companies.

(b) The sum of the rated capacities of the power interconnection devices between the principal company and all neighboring companies, minus the sum of the electric power load on these interconnections.

(c) The rated capacity of the power transmission lines between the power interconnection devices and the electric generating units (the unit in the principal company that has the malfunctioning flue gas desulfurization system and the unit(s) in the neighboring company supplying replacement electrical power) less the electric power load on these transmission lines.

*Available system capacity means* the capacity determined by subtracting the system load and the system emergency reserves from the net system capacity.

*Biomass* means plant materials and animal waste.

*Bituminous coal* means coal that is classified as bituminous according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Boiler operating day* for units constructed, reconstructed, or modified on or before February 28, 2005, means a 24-hour period during which fossil fuel is combusted in a steam-generating unit for the entire 24 hours. For units constructed, reconstructed, or modified after February 28, 2005, *boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17) and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal (not meeting the definition of natural gas), coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

*Coal-fired electric utility steam generating unit* means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other fuels in any amount.

*Coal refuse* means waste products of coal mining, physical coal cleaning, and coal preparation operations (*e.g.* culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

*Cogeneration, also known as ''combined heat and power,''* means a steam-generating unit that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

*Combined cycle gas turbine* means a stationary turbine combustion system where heat from the turbine exhaust gases is recovered by a steam generating unit.

*Dry flue gas desulfurization technology* or *dry FGD* means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides ($SO_2$) from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline reagent and water, whether introduced separately or as a premixed slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry FGD technology include, but are not limited to, lime and sodium.

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

*Electric utility combined cycle gas turbine* means any combined cycle gas turbine used for electric generation that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Any steam distribution system that is constructed for the purpose of providing steam to a steam electric generator that would produce electrical power for sale is also considered in determining the electrical energy output capacity of the affected facility.

*Electric utility company* means the largest interconnected organization, business, or governmental entity that generates electric power for sale (*e.g.*, a holding company with operating subsidiary companies).

*Electric utility steam-generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility.

*Electrostatic precipitator* or *ESP* means an add-on air pollution control device used to capture particulate matter (PM) by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper.

*Emergency condition* means that period of time when:

(1) The electric generation output of an affected facility with a malfunctioning flue gas desulfurization system cannot be reduced or electrical output must be increased because:

(i) All available system capacity in the principal company interconnected with the affected facility is being operated, and

(ii) All available purchase power interconnected with the affected facility is being obtained, or

(2) The electric generation demand is being shifted as quickly as possible from an affected facility with a malfunctioning flue gas desulfurization system to one or more electrical generating units held in reserve by the principal company or by a neighboring company, or

(3) An affected facility with a malfunctioning flue gas desulfurization system becomes the only available unit to maintain a part or all of the principal company's system emergency reserves and the unit is operated in spinning reserve at the lowest practical electric generation load consistent with not causing significant physical damage to the unit. If the unit is operated at a higher load to meet load demand, an emergency condition would not exist unless the conditions under paragraph (1) of this definition apply.

*Emission limitation* means any emissions limit or operating limit.

*Emission rate period* means any calendar month included in a 12-month rolling average period.

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

*Fossil fuel* means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Gaseous fuel* means any fuel derived from coal or petroleum that is present as a gas at standard conditions and includes, but is not limited to, refinery fuel gas, process gas, coke-oven gas, synthetic gas, and gasified coal.

*Gross output* means the gross useful work performed by the steam generated and, for an IGCC electric utility steam generating unit, the fuel burned in stationary combustion turbines. For a unit generating only electricity, the gross useful work performed is the gross electrical output from the unit's turbine/generator sets. For a cogeneration unit, the gross useful work performed is the gross electrical or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output (i.e., steam delivered to an industrial process).

*24-hour period* means the period of time between 12:01 a.m. and 12:00 midnight.

*Integrated gasification combined cycle electric utility steam generating unit* or *IGCC electric utility steam generating unit* means a coal-fired electric utility steam generating unit that burns a synthetic gas derived from coal in a combined-cycle gas turbine. No coal is directly burned in the unit during operation.

*Interconnected* means that two or more electric generating units are electrically tied together by a network of power transmission lines, and other power transmission equipment.

*ISO conditions* means a temperature of 288 Kelvin, a relative humidity of 60 percent, and a pressure of 101.3 kilopascals.

*Lignite* means coal that is classified as lignite A or B according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Natural gas* means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 megajoules (MJ) per standard cubic meter (910 and 1,150 Btu per standard cubic foot).

*Neighboring company* means any one of those electric utility companies with one or more electric power interconnections to the principal company and which have geographically adjoining service areas.

*Net-electric output* means the gross electric sales to the utility power distribution system minus purchased power on a calendar year basis.

*Net system capacity* means the sum of the net electric generating capability (not necessarily equal to rated capacity) of all electric generating equipment owned by an electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) plus firm contractual purchases that are interconnected to the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

*Noncontinental area* means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

*Petroleum* means crude oil or petroleum or a fuel derived from crude oil or petroleum, including, but not limited to, distillate oil, residual oil, and petroleum coke.

*Potential combustion concentration* means the theoretical emissions (nanograms per joule (ng/J), lb/MMBtu heat input) that would result from combustion of a fuel in an uncleaned state without emission control systems) and:

(1) For particulate matter (PM) is:

(i) 3,000 ng/J (7.0 lb/MMBtu) heat input for solid fuel; and

(ii) 73 ng/J (0.17 lb/MMBtu) heat input for liquid fuels.

(2) For sulfur dioxide ($SO_2$) is determined under § 60.50Da(c).

(3) For nitrogen oxides ($NO_X$) is:

(i) 290 ng/J (0.67 lb/MMBtu) heat input for gaseous fuels;

(ii) 310 ng/J (0.72 lb/MMBtu) heat input for liquid fuels; and

(iii) 990 ng/J (2.30 lb/MMBtu) heat input for solid fuels.

*Potential electrical output capacity* means 33 percent of the maximum design heat input capacity of the steam generating unit, divided by 3,413 Btu/KWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr (*e.g.*, a steam generating unit with a 100 MW (340 MMBtu/hr) fossil-fuel heat input capacity would have a 289,080 MWh 12 month potential electrical output capacity). For electric utility combined cycle gas turbines the potential electrical output capacity is determined on the basis of the fossil-fuel firing

capacity of the steam generator exclusive of the heat input and electrical power contribution by the gas turbine.

*Principal company* means the electric utility company or companies which own the affected facility.

*Resource recovery unit* means a facility that combusts more than 75 percent non-fossil fuel on a quarterly (calendar) heat input basis.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Solid-derived fuel* means any solid, liquid, or gaseous fuel derived from solid fuel for the purpose of creating useful heat and includes, but is not limited to, solvent refined coal, liquified coal, synthetic gas, gasified coal, gasified petroleum coke, gasified biomass, and gasified tire derived fuel.

*Spare flue gas desulfurization system module* means a separate system of $SO_2$ emission control equipment capable of treating an amount of flue gas equal to the total amount of flue gas generated by an affected facility when operated at maximum capacity divided by the total number of nonspare flue gas desulfurization modules in the system.

*Spinning reserve* means the sum of the unutilized net generating capability of all units of the electric utility company that are synchronized to the power distribution system and that are capable of immediately accepting additional load. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

*Steam generating unit* means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included).

*Subbituminous coal* means coal that is classified as subbituminous A, B, or C according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*System emergency reserves* means an amount of electric generating capacity equivalent to the rated capacity of the single largest electric generating unit in the electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) which is interconnected with the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

*System load* means the entire electric demand of an electric utility company's service area interconnected with the affected facility that has the malfunctioning flue gas desulfurization system plus firm contractual sales to other electric utility companies. Sales to other electric utility companies (*e.g.*, emergency power) not on a firm contractual basis may also be included in the system load when no available system capacity exists in the electric utility company to which the power is supplied for sale.

*Wet flue gas desulfurization technology* or *wet FGD* means a $SO_2$ control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet FGD technology include, but are not limited to, lime, limestone, and sodium.

**§ 60.42Da Standard for particulate matter (PM).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain PM in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel;

(2) 1 percent of the potential combustion concentration (99 percent reduction) when combusting solid fuel; and

(3) 30 percent of potential combustion concentration (70 percent reduction) when combusting liquid fuel.

(b) On and after the date the initial PM performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(c) Except as provided in paragraph (d) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of either:

(1) 18 ng/J (0.14 lb/MWh) gross energy output; or

(2) 6.4 ng/J (0.015 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel.

(d) As an alternative to meeting the requirements of paragraph (c) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility shall cause to be discharged into the atmosphere from that affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain PM in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel, and

(2) 0.1 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.9 percent reduction) for an affected facility for which construction or reconstruction commenced after February 28, 2005 when combusting solid, liquid, or gaseous fuel, or

(3) 0.2 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.8 percent reduction) for an affected facility for which modification commenced after February 28, 2005 when combusting solid, liquid, or gaseous fuel.

**§ 60.43Da Standard for sulfur dioxide ($SO_2$).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or

solid-derived fuel and for which construction, reconstruction, or modification commenced before or on February 28, 2005, except as provided under paragraphs (c), (d), (f) or (h) of this section, any gases that contain $SO_2$ in excess of:

(1) 520 ng/J (1.20 lb/MMBtu) heat input and 10 percent of the potential combustion concentration (90 percent reduction); or

(2) 30 percent of the potential combustion concentration (70 percent reduction), when emissions are less than 260 ng/J (0.60 lb/MMBtu) heat input.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraphs (e) or (h) of this section) and for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain $SO_2$ in excess of:

(1) 340 ng/J (0.80 lb/MMBtu) heat input and 10 percent of the potential combustion concentration (90 percent reduction); or

(2) 100 percent of the potential combustion concentration (zero percent reduction) when emissions are less than 86 ng/J (0.20 lb/MMBtu) heat input.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid solvent refined coal (SRC–I) any gases that contain $SO_2$ in excess of 520 ng/J (1.20 lb/MMBtu) heat input and 15 percent of the potential combustion concentration (85 percent reduction) except as provided under paragraph (f) of this section; compliance with the emission limitation is determined on a 30-day rolling average basis and compliance with the percent reduction requirement is determined on a 24-hour basis.

(d) Sulfur dioxide emissions are limited to 520 ng/J (1.20 lb/MMBtu) heat input from any affected facility which:

(1) Combusts 100 percent anthracite;

(2) Is classified as a resource recovery unit; or

(3) Is located in a noncontinental area and combusts solid fuel or solid-derived fuel.

(e) Sulfur dioxide emissions are limited to 340 ng/J (0.80 lb/MMBtu) heat input from any affected facility which is located in a noncontinental area and combusts liquid or gaseous fuels (excluding solid-derived fuels).

(f) The emission reduction requirements under this section do not apply to any affected facility that is operated under an $SO_2$ commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

(g) Compliance with the emission limitation and percent reduction requirements under this section are both determined on a 30-day rolling average basis except as provided under paragraph (c) of this section.

(h) When different fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

(1) If emissions of $SO_2$ to the atmosphere are greater than 260 ng/J (0.60 lb/MMBtu) heat input

$$E_s = \frac{(340x + 520y)}{100} \quad \text{and} \quad \%P_s = 10$$

(2) If emissions of $SO_2$ to the atmosphere are equal to or less than 260 ng/J (0.60 lb/MMBtu) heat input:

$$E_s = \frac{(340x + 520y)}{100} \quad \text{and} \quad \%P_s = \frac{(10x + 30y)}{100}$$

Where:

$E_s$ = Prorated $SO_2$ emission limit (ng/J heat input);

$\%P_s$ = Percentage of potential $SO_2$ emission allowed;

x = Percentage of total heat input derived from the combustion of liquid or gaseous fuels (excluding solid-derived fuels); and

y = Percentage of total heat input derived from the combustion of solid fuel (including solid-derived fuels).

(i) Except as provided in paragraphs (j) and (k) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility, any gases that contain $SO_2$ in excess of the applicable emission limitation specified in paragraphs (i)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(j) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after February 28, 2005, and that burns 75 percent or more (by heat input) coal refuse on a 12-month rolling average basis, shall caused to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the applicable emission limitation specified in paragraphs (j)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February

28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(k) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility located in a noncontinental area that commenced construction, reconstruction, or modification commenced after February 28, 2005, shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the applicable emission limitation specified in paragraphs (k)(1) and (2) of this section.

(1) For an affected facility that burns solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input on a 30-day rolling average basis.

(2) For an affected facility that burns other than solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of if the affected facility or 230 ng/J (0.54 lb/MMBtu) heat input on a 30-day rolling average basis.

**§ 60.44Da Standard for nitrogen oxides ($NO_X$).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility, except as provided under paragraphs (b), (d), (e), and (f) of this section, any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the following emission limits, based on a 30-day rolling average basis, except as provided under § 60.48Da(j)(1):

(1) $NO_X$ emission limits.

| Fuel type | Emission limit for heat input | |
|---|---|---|
| | ng/J | lb/MMBtu |
| Gaseous fuels: | | |
| Coal-derived fuels | 210 | 0.50 |
| All other fuels | 86 | 0.20 |
| Liquid fuels: | | |
| Coal-derived fuels | 210 | 0.50 |
| Shale oil | 210 | 0.50 |
| All other fuels | 130 | 0.30 |
| Solid fuels: | | |
| Coal-derived fuels | 210 | 0.50 |
| Any fuel containing more than 25%, by weight, coal refuse | (1) | (1) |
| Any fuel containing more than 25%, by weight, lignite if the lignite is mined in North Dakota, South Dakota, or Montana, and is combusted in a slag tap furnace [2] | 340 | 0.80 |
| Any fuel containing more than 25%, by weight, lignite not subject to the 340 ng/J heat input emission limit [2] | 260 | 0.60 |
| Subbituminous coal | 210 | 0.50 |
| Bituminous coal | 260 | 0.60 |
| Anthracite coal | 260 | 0.60 |
| All other fuels | 260 | 0.60 |

[1] Exempt from $NO_X$ standards and $NO_X$ monitoring requirements.
[2] Any fuel containing less than 25%, by weight, lignite is not prorated but its percentage is added to the percentage of the predominant fuel.

(2) $NO_X$ reduction requirement.

| Fuel type | Percent reduction of potential combustion concentration |
|---|---|
| Gaseous fuels | 25 |
| Liquid fuels | 30 |
| Solid fuels | 65 |

(b) The emission limitations under paragraph (a) of this section do not apply to any affected facility which is combusting coal-derived liquid fuel and is operating under a commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

(c) Except as provided under paragraphs (d), (e), and (f) of this section, when two or more fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

$$E_n = \frac{(86w + 130x + 210y + 260z + 340v)}{100}$$

Where:

$E_n$ = Applicable standard for $NO_X$ when multiple fuels are combusted simultaneously (ng/J heat input);

w = Percentage of total heat input derived from the combustion of fuels subject to the 86 ng/J heat input standard;

x = Percentage of total heat input derived from the combustion of fuels subject to the 130 ng/J heat input standard;

y = Percentage of total heat input derived from the combustion of fuels subject to the 210 ng/J heat input standard;

z = Percentage of total heat input derived from the combustion of fuels subject to the 260 ng/J heat input standard; and

v = Percentage of total heat input delivered from the combustion of fuels subject to the 340 ng/J heat input standard.

(d)(1) On and after the date on which the initial performance test is completed

or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction after July 9, 1997, but before or on February 28, 2005 shall cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 200 ng/J (1.6 lb/MWh) gross energy output, based on a 30-day rolling average basis, except as provided under § 60.48Da(k).

(2) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of affected facility for which reconstruction commenced after July 9, 1997, but before or on February 28, 2005 shall cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 65 ng/J (0.15 lb/MMBtu) heat input, based on a 30-day rolling average basis.

(e) Except for an IGCC electric utility steam generating unit meeting the requirements of paragraph (f) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the applicable emission limitation specified in paragraphs (e)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided under § 60.48Da(k).

(2) For an affected facility for which reconstruction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of either:

(i) 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 47 ng/J (0.11 lb/MMBtu) heat input on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis.

(f) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an IGCC electric utility steam generating unit subject to the provisions of this subpart and for which construction, reconstruction, or modification commenced after February 28, 2005, shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) Except as provided for in paragraphs (f)(2) and (3) of this section, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis.

(2) When burning liquid fuel exclusively or in combination with solid-derived fuel such that the liquid fuel contributes 50 percent or more of the total heat input to the combined cycle combustion turbine, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 190 ng/J (1.5 lb/MWh) gross energy output on a 30-day rolling average basis.

(3) In cases when during a 30-day rolling average compliance period liquid fuel is burned in such a manner to meet the conditions in paragraph (f)(2) of this section for only a portion of the clock hours in the 30-day period, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the computed weighted-average emissions limit based on the proportion of gross energy output (in MWh) generated during the compliance period for each of emissions limits in paragraphs (f)(1) and (2) of this section.

**§ 60.45Da Standard for mercury (Hg).**

(a) For each coal-fired electric utility steam generating unit other than an IGCC electric utility steam generating unit, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases that contain mercury (Hg) emissions in excess of each Hg emissions limit in paragraphs (a)(1) through (5) of this section that applies to you. The Hg emissions limits in paragraphs (a)(1) through (5) of this section are based on a 12-month rolling average basis using the procedures in § 60.50Da(h).

(1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $20 \times 10^{-6}$ pound per megawatt hour (lb/MWh) or 0.020 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0025 ng/J.

(2) For each coal-fired electric utility steam generating unit that burns only subbituminous coal:

(i) If your unit is located in a county-level geographical area receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $66 \times 10^{-6}$ lb/MWh or 0.066 lb/GWh on an output basis. The SI equivalent is 0.0083 ng/J.

(ii) If your unit is located in a county-level geographical area receiving less than or equal to 25 in/yr mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $97 \times 10^{-6}$ lb/MWh or 0.097 lb/GWh on an output basis. The SI equivalent is 0.0122 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $175 \times 10^{-6}$ lb/MWh or 0.175 lb/GWh on an output basis. The SI equivalent is 0.0221 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $16 \times 10^{-6}$ lb/MWh or 0.016 lb/GWh on an output basis. The SI equivalent is 0.0020 ng/J.

(5) For each coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks (*i.e.*, bituminous coal, subbituminous coal, lignite) or a blend of coal and coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the unit-specific Hg emissions limit

established according to paragraph (a)(5)(i) or (ii) of this section, as applicable to the affected unit.

(i) If you operate a coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks or a blend of coal and coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the computed weighted Hg emissions limit based on the Btu, MWh, or MJ) contributed by each coal rank burned during the compliance period and its applicable Hg emissions limit in paragraphs (a)(1) through (4) of this section as determined using Equation 1 in this section. For each affected source, you must comply with the weighted Hg emissions limit calculated using Equation 1 in this section based on the total Hg emissions from the unit and the total Btu, MWh, or MJ contributed by all fuels burned during the compliance period.

$$EL_b = \frac{\sum_{i=1}^{n} EL_i (HH_i)}{\sum_{i=1}^{n} HH_i} \qquad \text{(Eq. 1)}$$

Where:

$EL_b$ = Total allowable Hg in lb/MWh that can be emitted to the atmosphere from any affected source being averaged according to this paragraph.

$EL_i$ = Hg emissions limit for the subcategory i (coal rank) that applies to affected source, lb/MWh;

$HH_i$ = For each affected source, the Btu, MWh, or MJ contributed by the corresponding subcategory i (coal rank) burned during the compliance period; and

n = Number of subcategories (coal ranks) being averaged for an affected source.

(ii) If you operate a coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks or a blend of coal and coal refuse together with one or more non-regulated, supplementary fuels, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the computed weighted Hg emission limit based on the Btu, MWh, or MJ contributed by each coal rank burned during the compliance period and its applicable Hg emissions limit in paragraphs (a)(1) through (4) of this section as determined using Equation 1 in this section. For each affected source. You must comply with the weighted Hg emissions limit calculated using Equation 1 in this section based on the total Hg emissions from the unit contributed by both regulated and nonregulated fuels burned during the compliance period and the total Btu, MWh, or MJ contributed by both regulated and nonregulated fuels burned during the compliance period.

(b) For each IGCC electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases that contain Hg emissions in excess of $20 \times 10^{-6}$ lb/MWh or 0.020 lb/GWh on an output basis. The SI equivalent is 0.0025 ng/J. This Hg emissions limit is based on a 12-month rolling average basis using the procedures in § 60.50Da(h).

**§ 60.46Da [Reserved]**

**§ 60.47Da Commercial demonstration permit.**

(a) An owner or operator of an affected facility proposing to demonstrate an emerging technology may apply to the Administrator for a commercial demonstration permit. The Administrator will issue a commercial demonstration permit in accordance with paragraph (e) of this section. Commercial demonstration permits may be issued only by the Administrator, and this authority will not be delegated.

(b) An owner or operator of an affected facility that combusts solid solvent refined coal (SRC–I) and who is issued a commercial demonstration permit by the Administrator is not subject to the $SO_2$ emission reduction requirements under § 60.43Da(c) but must, as a minimum, reduce $SO_2$ emissions to 20 percent of the potential combustion concentration (80 percent reduction) for each 24-hour period of steam generator operation and to less than 520 ng/J (1.20 lb/MMBtu) heat input on a 30-day rolling average basis.

(c) An owner or operator of a fluidized bed combustion electric utility steam generator (atmospheric or pressurized) who is issued a commercial demonstration permit by the Administrator is not subject to the $SO_2$ emission reduction requirements under § 60.43Da(a) but must, as a minimum, reduce $SO_2$ emissions to 15 percent of the potential combustion concentration (85 percent reduction) on a 30-day rolling average basis and to less than 520 ng/J (1.20 lb/MMBtu) heat input on a 30-day rolling average basis.

(d) The owner or operator of an affected facility that combusts coal-derived liquid fuel and who is issued a commercial demonstration permit by the Administrator is not subject to the applicable $NO_X$ emission limitation and percent reduction under § 60.44Da(a) but must, as a minimum, reduce emissions to less than 300 ng/J (0.70 lb/MMBtu) heat input on a 30-day rolling average basis.

(e) Commercial demonstration permits may not exceed the following equivalent MW electrical generation capacity for any one technology category, and the total equivalent MW electrical generation capacity for all commercial demonstration plants may not exceed 15,000 MW.

| Technology | Pollutant | Equivalent electrical capacity (MW electrical output) |
|---|---|---|
| Solid solvent refined coal (SCR I) | $SO_2$ | 6,000–10,000 |
| Fluidized bed combustion (atmospheric) | $SO_2$ | 400–3,000 |
| Fluidized bed combustion (pressurized) | $SO_2$ | 400–1,200 |
| Coal liquification | $NO_X$ | 750–10,000 |
| Total allowable for all technologies | | 15,000 |

**§ 60.48Da Compliance provisions.**

(a) Compliance with the PM emission limitation under § 60.42Da(a)(1) constitutes compliance with the percent reduction requirements for PM under § 60.42Da(a)(2) and (3).

(b) Compliance with the $NO_X$ emission limitation under § 60.44Da(a)(1) constitutes compliance with the percent reduction requirements under § 60.44Da(a)(2).

(c) The PM emission standards under § 60.42Da, the $NO_X$ emission standards under § 60.44Da, and the Hg emission standards under § 60.45Da apply at all times except during periods of startup, shutdown, or malfunction.

(d) During emergency conditions in the principal company, an affected facility with a malfunctioning flue gas desulfurization system may be operated if $SO_2$ emissions are minimized by:

(1) Operating all operable flue gas desulfurization system modules, and bringing back into operation any malfunctioned module as soon as repairs are completed,

(2) Bypassing flue gases around only those flue gas desulfurization system modules that have been taken out of operation because they were incapable of any $SO_2$ emission reduction or which would have suffered significant physical damage if they had remained in operation, and

(3) Designing, constructing, and operating a spare flue gas desulfurization system module for an affected facility larger than 365 MW (1,250 MMBtu/hr) heat input (approximately 125 MW electrical output capacity). The Administrator may at his discretion require the owner or operator within 60 days of notification to demonstrate spare module capability. To demonstrate this capability, the owner or operator must demonstrate compliance with the appropriate requirements under paragraph under § 60.43Da(a), (b), (d), (e), and (h) for any period of operation lasting from 24 hours to 30 days when:

(i) Any one flue gas desulfurization module is not operated,

(ii) The affected facility is operating at the maximum heat input rate,

(iii) The fuel fired during the 24-hour to 30-day period is representative of the type and average sulfur content of fuel used over a typical 30-day period, and

(iv) The owner or operator has given the Administrator at least 30 days notice of the date and period of time over which the demonstration will be performed.

(e) After the initial performance test required under § 60.8, compliance with the $SO_2$ emission limitations and percentage reduction requirements under § 60.43Da and the $NO_X$ emission limitations under § 60.44Da is based on the average emission rate for 30 successive boiler operating days. A separate performance test is completed at the end of each boiler operating day after the initial performance test, and a new 30 day average emission rate for both $SO_2$ and $NO_X$ and a new percent reduction for $SO_2$ are calculated to show compliance with the standards.

(f) For the initial performance test required under § 60.8, compliance with the $SO_2$ emission limitations and percent reduction requirements under § 60.43Da and the $NO_X$ emission limitation under § 60.44Da is based on the average emission rates for $SO_2$, $NO_X$, and percent reduction for $SO_2$ for the first 30 successive boiler operating days. The initial performance test is the only test in which at least 30 days prior notice is required unless otherwise specified by the Administrator. The initial performance test is to be scheduled so that the first boiler operating day of the 30 successive boiler operating days is completed within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility.

(g) The owner or operator of an affected facility subject to emission limitations in this subpart shall determine compliance as follows:

(1) Compliance with applicable 30-day rolling average $SO_2$ and $NO_X$ emission limitations is determined by calculating the arithmetic average of all hourly emission rates for $SO_2$ and $NO_X$ for the 30 successive boiler operating days, except for data obtained during startup, shutdown, malfunction ($NO_X$ only), or emergency conditions ($SO_2$ only).

(2) Compliance with applicable $SO_2$ percentage reduction requirements is determined based on the average inlet and outlet $SO_2$ emission rates for the 30 successive boiler operating days.

(3) Compliance with applicable daily average PM emission limitations is determined by calculating the arithmetic average of all hourly emission rates for PM each boiler operating day, except for data obtained during startup, shutdown, and malfunction. Averages are only calculated for boiler operating days that have valid data for at least 18 hours of unit operation during which the standard applies. Instead, the valid hourly emission rates are averaged with the next boiler operating day with 18 hours or more of valid PM CEMS data to determine compliance.

(h) If an owner or operator has not obtained the minimum quantity of emission data as required under § 60.49Da of this subpart, compliance of the affected facility with the emission requirements under §§ 60.43Da and 60.44Da of this subpart for the day on which the 30-day period ends may be determined by the Administrator by following the applicable procedures in section 7 of Method 19 of appendix A of this part.

(i) *Compliance provisions for sources subject to § 60.44Da(d)(1), (e)(1), (e)(2)(i), (e)(3)(i), or (f).* The owner or operator of an affected facility subject to § 60.44Da(d)(1), (e)(1), (e)(2)(i), (e)(3)(i), or (f) shall calculate $NO_X$ emissions as $1.194 \times 10^{-7}$ lb/scf-ppm times the average hourly $NO_X$ output concentration in ppm (measured according to the provisions of § 60.49Da(c)), times the average hourly flow rate (measured in scfh, according to the provisions of § 60.49Da(l) or § 60.49Da(m)), divided by the average hourly gross energy output (measured according to the provisions of § 60.49Da(k)). Alternatively, for oil-fired and gas-fired units, $NO_X$ emissions may be calculated by multiplying the hourly $NO_X$ emission rate in lb/MMBtu (measured by the CEMS required under §§ 60.49Da(c) and (d)), by the hourly heat input rate (measured according to the provisions of § 60.49Da(n)), and dividing the result by the average gross energy output (measured according to the provisions of § 60.49Da(k)).

(j) *Compliance provisions for duct burners subject to § 60.44Da(a)(1).* To determine compliance with the emissions limits for $NO_X$ required by § 60.44Da(a) for duct burners used in combined cycle systems, either of the procedures described in paragraph (j)(1) or (2) of this section may be used:

(1) The owner or operator of an affected duct burner shall conduct the performance test required under § 60.8 using the appropriate methods in appendix A of this part. Compliance with the emissions limits under § 60.44Da(a)(1) is determined on the average of three (nominal 1-hour) runs for the initial and subsequent performance tests. During the performance test, one sampling site shall be located in the exhaust of the turbine prior to the duct burner. A second sampling site shall be located at the outlet from the heat recovery steam generating unit. Measurements shall be taken at both sampling sites during the performance test; or

(2) The owner or operator of an affected duct burner may elect to determine compliance by using the continuous emission monitoring system (CEMS) specified under § 60.49Da for measuring $NO_X$ and oxygen ($O_2$) (or carbon dioxide ($CO_2$)) and meet the requirements of § 60.49Da. Alternatively, data from a $NO_X$ emission rate (*i.e.*, $NO_X$-diluent) CEMS certified according to the provisions of § 75.20(c) of this chapter and appendix A to part 75 of this chapter, and meeting the quality assurance requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter, may be used,

with the following caveats. Data used to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter. The sampling site shall be located at the outlet from the steam generating unit. The $NO_X$ emission rate at the outlet from the steam generating unit shall constitute the $NO_X$ emission rate from the duct burner of the combined cycle system.

(k) *Compliance provisions for duct burners subject to § 60.44Da(d)(1) or (e)(1).* To determine compliance with the emission limitation for $NO_X$ required by § 60.44Da(d)(1) or (e)(1) for duct burners used in combined cycle systems, either of the procedures described in paragraphs (k)(1) and (2) of this section may be used:

(1) The owner or operator of an affected duct burner used in combined cycle systems shall determine compliance with the applicable $NO_X$ emission limitation in § 60.44Da(d)(1) or (e)(1) as follows:

(i) The emission rate (E) of $NO_X$ shall be computed using Equation 2 in this section:

$$E = \frac{\left(C_{sg} \times Q_{sg}\right) - \left(C_{te} \times Q_{te}\right)}{\left(O_{sg} \times h\right)} \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of $NO_X$ from the duct burner, ng/J (lb/MWh) gross output;

$C_{sg}$ = Average hourly concentration of $NO_X$ exiting the steam generating unit, ng/dscm (lb/dscf);

$C_{te}$ = Average hourly concentration of $NO_X$ in the turbine exhaust upstream from duct burner, ng/dscm (lb/dscf);

$Q_{sg}$ = Average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr);

$Q_{te}$ = Average hourly volumetric flow rate of exhaust gas from combustion turbine, dscm/hr (dscf/hr);

$O_{sg}$ = Average hourly gross energy output from steam generating unit, J (MWh); and

h = Average hourly fraction of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

(ii) Method 7E of appendix A of this part shall be used to determine the $NO_X$ concentrations ($C_{sg}$ and $C_{te}$). Method 2, 2F or 2G of appendix A of this part, as appropriate, shall be used to determine the volumetric flow rates ($Q_{sg}$ and $Q_{te}$) of the exhaust gases. The volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(iii) The owner or operator shall develop, demonstrate, and provide information satisfactory to the Administrator to determine the average hourly gross energy output from the steam generating unit, and the average hourly percentage of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

(iv) Compliance with the applicable $NO_X$ emission limitation in § 60.44Da(d)(1) or (e)(1) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests.

(2) The owner or operator of an affected duct burner used in a combined cycle system may elect to determine compliance with the applicable $NO_X$ emission limitation in § 60.44Da(d)(1) or (e)(1) on a 30-day rolling average basis as indicated in paragraphs (k)(2)(i) through (iv) of this section.

(i) The emission rate (E) of $NO_X$ shall be computed using Equation 3 in this section:

$$E = \frac{\left(C_{sg} \times Q_{sd}\right)}{O_{cc}} \qquad \text{(Eq. 3)}$$

Where:

E = Emission rate of $NO_X$ from the duct burner, ng/J (lb/MWh) gross output;

$C_{sg}$ = Average hourly concentration of $NO_X$ exiting the steam generating unit, ng/dscm (lb/dscf);

$Q_{sg}$ = Average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr); and

$O_{cc}$ = Average hourly gross energy output from entire combined cycle unit, J (MWh).

(ii) The CEMS specified under § 60.49Da for measuring $NO_X$ and $O_2$ (or $CO_2$) shall be used to determine the average hourly $NO_X$ concentrations ($C_{sg}$). The continuous flow monitoring system specified in § 60.49Da(l) or § 60.49Da(m) shall be used to determine the volumetric flow rate ($Q_{sg}$) of the exhaust gas. If the option to use the flow monitoring system in § 60.49Da(m) is selected, the flow rate data used to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter. The sampling site shall be located at the outlet from the steam generating unit.

(iii) The continuous monitoring system specified under § 60.49Da(k) for measuring and determining gross energy output shall be used to determine the average hourly gross energy output from the entire combined cycle unit ($O_{cc}$), which is the combined output from the combustion turbine and the steam generating unit.

(iv) The owner or operator may, in lieu of installing, operating, and recording data from the continuous flow monitoring system specified in § 60.49Da(l), determine the mass rate (lb/hr) of $NO_X$ emissions by installing, operating, and maintaining continuous fuel flowmeters following the appropriate measurements procedures specified in appendix D of part 75 of this chapter. If this compliance option is selected, the emission rate (E) of $NO_X$ shall be computed using Equation 4 in this section:

$$E = \frac{\left(ER_{sg} \times H_{cc}\right)}{O_{cc}} \qquad \text{(Eq. 4)}$$

Where:

E = Emission rate of $NO_X$ from the duct burner, ng/J (lb/MWh) gross output;

$ER_{sg}$ = Average hourly emission rate of $NO_X$ exiting the steam generating unit heat input calculated using appropriate F factor as described in Method 19 of appendix A of this part, ng/J (lb/MMBtu);

$H_{cc}$ = Average hourly heat input rate of entire combined cycle unit, J/hr (MMBtu/hr); and

$O_{cc}$ = Average hourly gross energy output from entire combined cycle unit, J (MWh).

(3) When an affected duct burner steam generating unit utilizes a common steam turbine with one or more affected duct burner steam generating units, the owner or operator shall either:

(i) Determine compliance with the applicable $NO_X$ emissions limits by measuring the emissions combined with the emissions from the other unit(s) utilizing the common steam turbine; or

(ii) Develop, demonstrate, and provide information satisfactory to the Administrator on methods for apportioning the combined gross energy output from the steam turbine for each of the affected duct burners. The Administrator may approve such demonstrated substitute methods for apportioning the combined gross energy output measured at the steam turbine whenever the demonstration ensures accurate estimation of emissions regulated under this part.

(l) *Compliance provisions for sources subject to § 60.45Da.* The owner or operator of an affected facility subject to § 60.45Da (new sources constructed or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of § 60.49Da(p) in conjunction with hourly stack gas volumetric flow rates

measured according to the provisions of § 60.49Da(l) or (m), and hourly gross electrical outputs, determined according to the provisions in § 60.49Da(k). Compliance with the applicable standard under § 60.45Da is determined on a 12-month rolling average basis.

(m) *Compliance provisions for sources subject to § 60.43Da(i)(1)(i), (i)(2)(i), (i)(3)(i), (j)(1)(i), (j)(2)(i), or (j)(3)(i).* The owner or operator of an affected facility subject to § 60.43Da(i)(1)(i), (i)(2)(i), (i)(3)(i), (j)(1)(i), (j)(2)(i), or (j)(3)(i) shall calculate $SO_2$ emissions as $1.660 \times 10^{-7}$ lb/scf-ppm times the average hourly $SO_2$ output concentration in ppm (measured according to the provisions of § 60.49Da(b)), times the average hourly flow rate (measured according to the provisions of § 60.49Da(l) or § 60.49Da(m)), divided by the average hourly gross energy output (measured according to the provisions of § 60.49Da(k)). Alternatively, for oil-fired and gas-fired units, $SO_2$ emissions may be calculated by multiplying the hourly $SO_2$ emission rate (in lb/MMBtu), measured by the CEMS required under § 60.49Da, by the hourly heat input rate (measured according to the provisions of § 60.49Da(n)), and dividing the result by the average gross energy output (measured according to the provisions of § 60.49Da(k)).

(n) *Compliance provisions for sources subject to § 60.42Da(c)(1).* The owner or operator of an affected facility subject to § 60.42Da(c)(1) shall calculate PM emissions by multiplying the average hourly PM output concentration, measured according to the provisions of § 60.49Da(t), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k). Compliance with the emission limit is determined by calculating the arithmetic average of the hourly emission rates computed for each boiler operating day.

(o) *Compliance provisions for sources subject to § 60.42Da(c)(2) or (d).* Except as provided for in paragraph (p) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, shall demonstrate compliance with each applicable emission limit according to the requirements in paragraphs (o)(1) through (o)(5) of this section and use a COMS to demonstrate compliance with § 60.42Da(b).

(1) You must conduct a performance test to demonstrate initial compliance with the applicable PM emissions limit in 60.42Da(c)(2) or (d) by the applicable date specified in § 60.8(a). Thereafter, you must conduct each subsequent performance test within 12 calendar months of the date of the prior performance test. You must conduct each performance test according to the requirements in § 60.8 using the test methods and procedures in § 60.50Da.

(2) You must monitor the performance of each electrostatic precipitator or fabric filter (baghouse) operated to comply with the applicable PM emissions limit in § 60.42Da(c)(2) or (d) using a continuous opacity monitoring system (COMS) according to the requirements in paragraphs (o)(2)(i) through (vi) unless you elect to comply with one of the alternatives provided in paragraphs (o)(3) and (o)(4) of this section, as applicable to your control device.

(i) Each COMS must meet Performance Specification 1 in 40 CFR part 60, appendix B.

(ii) You must comply with the quality assurance requirements in paragraphs (o)(4)(ii)(A) through (E) of this section.

(A) You must automatically (intrinsic to the opacity monitor) check the zero and upscale (span) calibration drifts at least once daily. For a particular COMS, the acceptable range of zero and upscale calibration materials is as defined in the applicable version of Performance Specification 1 in 40 CFR part 60, appendix B.

(B) You must adjust the zero and span whenever the 24-hour zero drift or 24-hour span drift exceeds 4 percent opacity. The COMS must allow for the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified. The optical surfaces exposed to the effluent gases must be cleaned prior to performing the zero and span drift adjustments, except for systems using automatic zero adjustments. For systems using automatic zero adjustments, the optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

(C) You must apply a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. All procedures applied must provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(D) Except during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments, the COMS must be in continuous operation and must complete a minimum of one cycle of sampling and analyzing for each successive 10 second period and one cycle of data recording for each successive 6-minute period.

(E) You must reduce all data from the COMS to 6-minute averages. Six-minute opacity averages must be calculated from 36 or more data points equally spaced over each 6-minute period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments must not be included in the data averages. An arithmetic or integrated average of all data may be used.

(iii) During each performance test conducted according to paragraph (o)(1) of this section, you must establish an opacity baseline level. The value of the opacity baseline level is determined by averaging all of the 6-minute average opacity values (reported to the nearest 0.1 percent opacity) from the COMS measurements recorded during each of the test run intervals conducted for the performance test, and then adding 2.5 percent opacity to your calculated average opacity value for all of the test runs. If your calculated average opacity value for all of the test runs is less than 5.0 percent, then the opacity baseline level is set at 5.0 percent.

(iv) You must evaluate the preceding 24-hour average opacity level measured by the COMS each boiler operating day excluding periods of affected source startup, shutdown, or malfunction. If the measured 24-hour average opacity emission level is greater than the baseline opacity level determined in paragraph (o)(2)(iii) of this section, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high opacity incident and take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the measured 24-hour average opacity to a level below the baseline opacity level.

(v) You must record the opacity measurements, calculations performed, and any corrective actions taken. The record of corrective action taken must include the date and time during which the measured 24-hour average opacity was greater than baseline opacity level, and the date, time, and description of the corrective action.

(vi) If the measured 24-hour average opacity for your affected source remains at a level greater than the opacity baseline level after 7 days, then you must conduct a new PM performance test according to paragraph (o)(1) of this section and establish a new opacity baseline value according to paragraph (o)(2) of this section. This new performance test must be conducted within 60 days of the date that the

measured 24-hour average opacity was first determined to exceed the baseline opacity level unless a wavier is granted by the appropriate delegated permitting authority.

(3) As an alternative to complying with the requirements of paragraph (o)(2) of this section, an owner or operator may elect to monitor the performance of an electrostatic precipitator (ESP) operated to comply with the applicable PM emissions limit in § 60.42Da(c)(2) or (d) using an ESP predictive model developed in accordance with the requirements in paragraphs (o)(3)(i) through (v) of this section.

(i) You must calibrate the ESP predictive model with each PM control device used to comply with the applicable PM emissions limit in § 60.42Da(c)(2) or (d) operating under normal conditions. In cases when a wet scrubber is used in combination with an ESP to comply with the PM emissions limit, the daily average liquid-to-gas flow rate for the wet scrubber must be maintained at 90 percent of average ratio measured during all test run intervals for the performance test conducted according to paragraph (o)(1) of this section.

(ii) You must develop a site-specific monitoring plan that includes a description of the ESP predictive model used, the model input parameters, and the procedures and criteria for establishing monitoring parameter baseline levels indicative of compliance with the PM emissions limit. You must submit the site-specific monitoring plan for approval by the appropriate delegated permitting authority. For reference purposes in preparing the monitoring plan, see the OAQPS ''Compliance Assurance Monitoring (CAM) Protocol for an Electrostatic Precipitator (ESP) Controlling Particulate Matter (PM) Emissions from a Coal-Fired Boiler.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring .

(iii) You must run the ESP predictive model using the applicable input data each boiler operating day and evaluate the model output for the preceding boiler operating day excluding periods of affected source startup, shutdown, or malfunction. If the values for one or more of the model parameters exceed the applicable baseline levels determined according to your approved site-specific monitoring plan, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of a model parameter deviation and, take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to return the model output to within the applicable baseline levels.

(iv) You must record the ESP predictive model inputs and outputs and any corrective actions taken. The record of corrective action taken must include the date and time during which the model output values exceeded the applicable baseline levels, and the date, time, and description of the corrective action.

(v) If after 7 consecutive days a model parameter continues to exceed the applicable baseline level, then you must conduct a new PM performance test according to paragraph (o)(1) of this section. This new performance test must be conducted within 60 days of the date that the model parameter was first determined to exceed its baseline level unless a wavier is granted by the appropriate delegated permitting authority.

(4) As an alternative to complying with the requirements of paragraph (o)(2) of this section, an owner or operator may elect to monitor the performance of a fabric filter (baghouse) operated to comply with the applicable PM emissions limit in § 60.42Da(c)(2) or (d) by using a bag leak detection system according to the requirements in paragraphs (o)(4)(i) through (v) of this section.

(i) Each bag leak detection system must meet the specifications and requirements in paragraphs (o)(4)(i)(A) through (H) of this section.

(A) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(B) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator must continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger.)

(C) The bag leak detection system must be equipped with an alarm system that will react when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (o)(4)(i)(D) of this section, and the alarm must be located such that it can be noticed by the appropriate plant personnel.

(D) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(E) Following initial adjustment, you must not adjust the averaging period, alarm set point, or alarm delay time without approval from the appropriate delegated permitting authority except as provided in paragraph (d)(1)(vi) of this section.

(F) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (o)(4)(ii) of this section.

(G) You must install the bag leak detection sensor downstream of the fabric filter and upstream of any wet scrubber.

(H) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(ii) You must develop and submit to the appropriate delegated permitting authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (o)(4)(ii)(A) through (F) of this section.

(A) Installation of the bag leak detection system;

(B) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(C) Operation of the bag leak detection system, including quality assurance procedures;

(D) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(E) How the bag leak detection system output will be recorded and stored; and

(F) Corrective action procedures as specified in paragraph (o)(4)(iii) of this section. In approving the site-specific monitoring plan, the appropriate delegated permitting authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to

alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(iii) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (o)(4)(ii)(F) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(A) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(B) Sealing off defective bags or filter media;

(C) Replacing defective bags or filter media or otherwise repairing the control device;

(D) Sealing off a defective fabric filter compartment;

(E) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(F) Shutting down the process producing the particulate emissions.

(iv) You must maintain records of the information specified in paragraphs (o)(4)(iv)(A) through (C) of this section for each bag leak detection system.

(A) Records of the bag leak detection system output;

(B) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(C) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, if procedures were initiated within 1 hour of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and if the alarm was alleviated within 3 hours of the alarm.

(v) If after any period of composed of 30 boiler operating days during which the alarm rate exceeds 5 percent of the process operating time (excluding control device or process startup, shutdown, and malfunction), then you must conduct a new PM performance test according to paragraph (o)(1) of this section. This new performance test must be conducted within 60 days of the date that the alarm rate was first determined to exceed 5 percent limit unless a wavier is granted by the appropriate delegated permitting authority.

(5) An owner or operator of a modified affected source electing to meet the emission limitations in § .42Da(d) shall determine the percent reduction in PM by using the emission rate for PM determined by the performance test conducted according to the requirements in paragraph (o)(1) of this section and the ash content on a mass basis of the fuel burned during each performance test run as determined by analysis of the fuel as fired.

(p) As an alternative to meeting the compliance provisions specified in paragraph (o) of this section, an owner or operator may elect to install, certify, maintain, and operate a CEMS measuring PM emissions discharged from the affected facility to the atmosphere and record the output of the system as specified in paragraphs (p)(1) through (p)(8) of this section.

(1) The owner or operator shall submit a written notification to the Administrator of intent to demonstrate compliance with this subpart by using a CEMS measuring PM. This notification shall be sent at least 30 calendar days before the initial startup of the monitor for compliance determination purposes. The owner or operator may discontinue operation of the monitor and instead return to demonstration of compliance with this subpart according to the requirements in paragraph (o) of this section by submitting written notification to the Administrator of such intent at least 30 calendar days before shutdown of the monitor for compliance determination purposes.

(2) Each CEMS shall be installed, certified, operated, and maintained according to the requirements in § 60.49Da(v).

(3) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of the date of notification to the Administrator required under paragraph (p)(1) of this section, whichever is later.

(4) Compliance with the applicable emissions limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emissions concentrations using the continuous monitoring system outlet data. The 24-hour block arithmetic average emission concentration shall be calculated using EPA Reference Method 19 of appendix A of this part, section 4.1.

(5) At a minimum, valid CEMS hourly averages shall be obtained for 75 percent of all operating hours on a 30-day rolling average basis. Beginning on January 1, 2012, valid CEMS hourly averages shall be obtained for 90 percent of all operating hours on a 30-day rolling average basis.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(6) The 1-hour arithmetic averages required shall be expressed in ng/J, MMBtu/hr, or lb/MWh and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(7) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (j)(5) of this section are not met.

(8) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 of appendix A of this part to provide, as necessary, valid emissions data for a minimum of 90 percent (only 75 percent is required prior to January 1, 2012) of all operating hours per 30-day rolling average.

**§ 60.49Da Emission monitoring.**

(a) Except as provided for in paragraphs (t) and (u) of this section, the owner or operator of an affected facility, shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the $SO_2$ control system), alternate parameters indicative of the PM control system's performance and/or good combustion are monitored (subject to the approval of the Administrator).

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring $SO_2$ emissions, except where natural gas is the only fuel combusted, as follows:

(1) Sulfur dioxide emissions are monitored at both the inlet and outlet of the $SO_2$ control device.

(2) For a facility that qualifies under the numerical limit provisions of § 60.43Da(d), (i), (j), or (k) $SO_2$ emissions are only monitored as discharged to the atmosphere.

(3) An ''as fired'' fuel monitoring system (upstream of coal pulverizers) meeting the requirements of Method 19 of appendix A of this part may be used to determine potential $SO_2$ emissions in place of a continuous $SO_2$ emission monitor at the inlet to the $SO_2$ control device as required under paragraph (b)(1) of this section.

(4) If the owner or operator has installed and certified a $SO_2$ continuous emissions monitoring system (CEMS) according to the requirements of § 75.20(c)(1) of this chapter and appendix A to part 75 of this chapter, and is continuing to meet the ongoing quality assurance requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter, that CEMS may be used to meet the requirements of this section, provided that:

(i) A $CO_2$ or $O_2$ continuous monitoring system is installed, calibrated, maintained and operated at the same location, according to paragraph (d) of this section; and

(ii) For sources subject to an $SO_2$ emission limit in lb/MMBtu under § 60.43Da:

(A) When relative accuracy testing is conducted, $SO_2$ concentration data and $CO_2$ (or $O_2$) data are collected simultaneously; and

(B) In addition to meeting the applicable $SO_2$ and $CO_2$ (or $O_2$) relative accuracy specifications in Figure 2 of appendix B to part 75 of this chapter, the relative accuracy (RA) standard in section 13.2 of Performance Specification 2 in appendix B to this part is met when the RA is calculated on a lb/MMBtu basis; and

(iii) The reporting requirements of § 60.51Da are met. The $SO_2$ and $CO_2$ (or $O_2$) data reported to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the $SO_2$ data have been bias adjusted according to the procedures of part 75 of this chapter.

(c)(1) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring $NO_X$ emissions discharged to the atmosphere; or

(2) If the owner or operator has installed a $NO_X$ emission rate CEMS to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.51Da. Data reported to meet the requirements of § 60.51Da shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(d) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring the $O_2$ or carbon dioxide ($CO_2$) content of the flue gases at each location where $SO_2$ or $NO_X$ emissions are monitored. For affected facilities subject to a lb/MMBtu $SO_2$ emission limit under § 60.43Da, if the owner or operator has installed and certified a $CO_2$ or $O_2$ monitoring system according to § 75.20(c) of this chapter and Appendix A to part 75 of this chapter and the monitoring system continues to meet the applicable quality-assurance provisions of § 75.21 of this chapter and appendix B to part 75 of this chapter, that CEMS may be used together with the part 75 $SO_2$ concentration monitoring system described in paragraph (b) of this section, to determine the $SO_2$ emission rate in lb/MMBtu. $SO_2$ data used to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(e) The CEMS under paragraphs (b), (c), and (d) of this section are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, malfunction or emergency conditions, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments.

(f)(1) For units that began construction, reconstruction, or modification on or before February 28, 2005, the owner or operator shall obtain emission data for at least 18 hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement cannot be met with CEMS, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

(2) For units that began construction, reconstruction, or modification after February 28, 2005, the owner or operator shall obtain emission data for at least 90 percent of all operating hours for each 30 successive boiler operating days. If this minimum data requirement cannot be met with a CEMS, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

(g) The 1-hour averages required under paragraph § 60.13(h) are expressed in ng/J (lb/MMBtu) heat input and used to calculate the average emission rates under § 60.48Da. The 1-hour averages are calculated using the data points required under § 60.13(h)(2).

(h) When it becomes necessary to supplement CEMS data to meet the minimum data requirements in paragraph (f) of this section, the owner or operator shall use the reference methods and procedures as specified in this paragraph. Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Method 6 of appendix A of this part shall be used to determine the $SO_2$ concentration at the same location as the $SO_2$ monitor. Samples shall be taken at 60-minute intervals. The sampling time and sample volume for each sample shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Each sample represents a 1-hour average.

(2) Method 7 of appendix A of this part shall be used to determine the $NO_X$ concentration at the same location as the $NO_X$ monitor. Samples shall be taken at 30-minute intervals. The arithmetic average of two consecutive samples represents a 1-hour average.

(3) The emission rate correction factor, integrated bag sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ or $CO_2$ concentration at the same location as the $O_2$ or $CO_2$ monitor. Samples shall be taken for at least 30 minutes in each hour. Each sample represents a 1-hour average.

(4) The procedures in Method 19 of appendix A of this part shall be used to compute each 1-hour average concentration in ng/J (lb/MMBtu) heat input.

(i) The owner or operator shall use methods and procedures in this paragraph to conduct monitoring system performance evaluations under § 60.13(c) and calibration checks under § 60.13(d). Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Methods 3B, 6, and 7 of appendix A of this part shall be used to determine $O_2$, $SO_2$, and $NO_X$ concentrations, respectively.

(2) $SO_2$ or $NO_X$ (NO), as applicable, shall be used for preparing the

calibration gas mixtures (in $N_2$, as applicable) under Performance Specification 2 of appendix B of this part.

(3) For affected facilities burning only fossil fuel, the span value for a CEMS for measuring opacity is between 60 and 80 percent. Span values for a CEMS measuring $NO_X$ shall be determined using one of the following procedures:

(i) Except as provided under paragraph (i)(3)(ii) of this section, $NO_X$ span values shall be determined as follows:

| Fossil fuel | Span values for $NO_X$ (ppm) |
|---|---|
| Gas | 500. |
| Liquid | 500. |
| Solid | 1,000. |
| Combination | 500 (x + y) + 1,000z. |

Where:

x = Fraction of total heat input derived from gaseous fossil fuel,

y = Fraction of total heat input derived from liquid fossil fuel, and

z = Fraction of total heat input derived from solid fossil fuel.

(ii) As an alternative to meeting the requirements of paragraph (i)(3)(i) of this section, the owner or operator of an affected facility may elect to use the $NO_X$ span values determined according to section 2.1.2 in appendix A to part 75 of this chapter.

(4) All span values computed under paragraph (i)(3)(i) of this section for burning combinations of fossil fuels are rounded to the nearest 500 ppm. Span values computed under paragraph (i)(3)(ii) of this section shall be rounded off according to section 2.1.2 in appendix A to part 75 of this chapter.

(5) For affected facilities burning fossil fuel, alone or in combination with non-fossil fuel and determining span values under paragraph (i)(3)(i) of this section, the span value of the $SO_2$ CEMS at the inlet to the $SO_2$ control device is 125 percent of the maximum estimated hourly potential emissions of the fuel fired, and the outlet of the $SO_2$ control device is 50 percent of maximum estimated hourly potential emissions of the fuel fired. For affected facilities determining span values under paragraph (i)(3)(ii) of this section, $SO_2$ span values shall be determined according to section 2.1.1 in appendix A to part 75 of this chapter.

(j) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 6 of appendix A of this part, Method 6A or 6B (whenever Methods 6 and 3 or 3B of appendix A of this part data are used) or 6C of appendix A of this part may be used. Each Method 6B of appendix A of this part sample obtained over 24 hours represents 24 1-hour averages. If Method 6A or 6B of appendix A of this part is used under paragraph (i) of this section, the conditions under § 60.48Da(d)(1) apply; these conditions do not apply under paragraph (h) of this section.

(2) For Method 7 of appendix A of this part, Method 7A, 7C, 7D, or 7E of appendix A of this part may be used. If Method 7C, 7D, or 7E of appendix A of this part is used, the sampling time for each run shall be 1 hour.

(3) For Method 3 of appendix A of this part, Method 3A or 3B of appendix A of this part may be used if the sampling time is 1 hour.

(4) For Method 3B of appendix A of this part, Method 3A of appendix A of this part may be used.

(k) The procedures specified in paragraphs (k)(1) through (3) of this section shall be used to determine gross output for sources demonstrating compliance with the output-based standard under § 60.44Da(d)(1).

(1) The owner or operator of an affected facility with electricity generation shall install, calibrate, maintain, and operate a wattmeter; measure gross electrical output in MWh on a continuous basis; and record the output of the monitor.

(2) The owner or operator of an affected facility with process steam generation shall install, calibrate, maintain, and operate meters for steam flow, temperature, and pressure; measure gross process steam output in joules per hour (or Btu per hour) on a continuous basis; and record the output of the monitor.

(3) For affected facilities generating process steam in combination with electrical generation, the gross energy output is determined from the gross electrical output measured in accordance with paragraph (k)(1) of this section plus 75 percent of the gross thermal output (measured relative to ISO conditions) of the process steam measured in accordance with paragraph (k)(2) of this section.

(l) The owner or operator of an affected facility demonstrating compliance with an output-based standard under § 60.42Da, § 60.43Da, § 60.44Da, or § 60.45Da shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B of this part and the CD assessment, RATA and reporting provisions of procedure 1 of appendix F of this part, and record the output of the system, for measuring the volumetric flow rate of exhaust gases discharged to the atmosphere; or

(m) Alternatively, data from a continuous flow monitoring system certified according to the requirements of § 75.20(c) of this chapter and appendix A to part 75 of this chapter, and continuing to meet the applicable quality control and quality assurance requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter, may be used. Flow rate data reported to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(n) Gas-fired and oil-fired units. The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in 40 CFR 72.2, may use, as an alternative to the requirements specified in either paragraph (l) or (m) of this section, a fuel flow monitoring system certified and operated according to the requirements of appendix D of part 75 of this chapter.

(o) The owner or operator of a duct burner, as described in § 60.41Da, which is subject to the $NO_X$ standards of § 60.44Da(a)(1), (d)(1), or (e)(1) is not required to install or operate a CEMS to measure $NO_X$ emissions; a wattmeter to measure gross electrical output; meters to measure steam flow, temperature, and pressure; and a continuous flow monitoring system to measure the flow of exhaust gases discharged to the atmosphere.

(p) The owner or operator of an affected facility demonstrating compliance with an Hg limit in § 60.45Da shall install and operate a CEMS to measure and record the concentration of Hg in the exhaust gases from each stack according to the requirements in paragraphs (p)(1) through (p)(3) of this section. Alternatively, for an affected facility that is also subject to the requirements of subpart I of part 75 of this chapter, the owner or operator may install, certify, maintain, operate and quality-assure the data from a Hg CEMS according to § 75.10 of this chapter and appendices A and B to part 75 of this chapter, in lieu of following the procedures in paragraphs (p)(1) through (p)(3) of this section.

(1) The owner or operator must install, operate, and maintain each CEMS according to Performance Specification 12A in appendix B to this part.

(2) The owner or operator must conduct a performance evaluation of

each CEMS according to the requirements of § 60.13 and Performance Specification 12A in appendix B to this part.

(3) The owner or operator must operate each CEMS according to the requirements in paragraphs (p)(3)(i) through (iv) of this section.

(i) As specified in § 60.13(e)(2), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(ii) The owner or operator must reduce CEMS data as specified in § 60.13(h).

(iii) The owner or operator shall use all valid data points collected during the hour to calculate the hourly average Hg concentration.

(iv) The owner or operator must record the results of each required certification and quality assurance test of the CEMS.

(4) Mercury CEMS data collection must conform to paragraphs (p)(4)(i) through (iv) of this section.

(i) For each calendar month in which the affected unit operates, valid hourly Hg concentration data, stack gas volumetric flow rate data, moisture data (if required), and electrical output data (i.e., valid data for all of these parameters) shall be obtained for at least 75 percent of the unit operating hours in the month.

(ii) Data reported to meet the requirements of this subpart shall not include hours of unit startup, shutdown, or malfunction. In addition, for an affected facility that is also subject to subpart I of part 75 of this chapter, data reported to meet the requirements of this subpart shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(iii) If valid data are obtained for less than 75 percent of the unit operating hours in a month, you must discard the data collected in that month and replace the data with the mean of the individual monthly emission rate values determined in the last 12 months. In the 12-month rolling average calculation, this substitute Hg emission rate shall be weighted according to the number of unit operating hours in the month for which the data capture requirement of § 60.49Da(p)(4)(i) was not met.

(iv) Notwithstanding the requirements of paragraph (p)(4)(iii) of this section, if valid data are obtained for less than 75 percent of the unit operating hours in another month in that same 12-month rolling average cycle, discard the data collected in that month and replace the data with the highest individual monthly emission rate determined in the last 12 months. In the 12-month rolling average calculation, this substitute Hg emission rate shall be weighted according to the number of unit operating hours in the month for which the data capture requirement of § 60.49Da(p)(4)(i) was not met.

(q) As an alternative to the CEMS required in paragraph (p) of this section, the owner or operator may use a sorbent trap monitoring system (as defined in § 72.2 of this chapter) to monitor Hg concentration, according to the procedures described in § 75.15 of this chapter and appendix K to part 75 of this chapter.

(r) For Hg CEMS that measure Hg concentration on a dry basis or for sorbent trap monitoring systems, the emissions data must be corrected for the stack gas moisture content. A certified continuous moisture monitoring system that meets the requirements of § 75.11(b) of this chapter is acceptable for this purpose. Alternatively, the appropriate default moisture value, as specified in § 75.11(b) or § 75.12(b) of this chapter, may be used.

(s) The owner or operator shall prepare and submit to the Administrator for approval a unit-specific monitoring plan for each monitoring system, at least 45 days before commencing certification testing of the monitoring systems. The owner or operator shall comply with the requirements in your plan. The plan must address the requirements in paragraphs (s)(1) through (6) of this section.

(1) Installation of the CEMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems;

(3) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations, relative accuracy test audits (RATA), etc.);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.13(d) or part 75 of this chapter (as applicable);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13 or part 75 of this chapter (as applicable); and

(6) Ongoing recordkeeping and reporting procedures in accordance with the requirements of this subpart.

(t) The owner or operator of an affected facility demonstrating compliance with the output-based emissions limitation under § 60.42Da(c)(1) shall install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section. An owner or operator of an affected source demonstrating compliance with the input-based emission limitation under § 60.42Da(c)(2) may install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section.

(u) An owner or operator of an affected source that meets the conditions in either paragraph (u)(1), (2) or (3) of this section is exempted from the continuous opacity monitoring system requirements in paragraph (a) of this section and the monitoring requirements in § 60.48Da(o).

(1) A CEMS for measuring PM emissions is used to demonstrate continuous compliance on a boiler operating day average with the emissions limitations under § 60.42Da(a)(1) or § 60.42Da(c)(2) and is installed, certified, operated, and maintained on the affected source according to the requirements of paragraph (v) of this section; or

(2) The affected source burns only gaseous fuels and does not use a post-combustion technology to reduce emissions of $SO_2$ or PM; or

(3) The affected source does not use post-combustion technology (except a wet scrubber) for reducing PM, $SO_2$, or carbon monoxide (CO) emissions, burns only natural gas, gaseous fuels, or fuel oils that contain less than or equal to 0.30 weight percent sulfur, and is operated such that emissions of CO to the atmosphere from the affected source are maintained at levels less than or equal to 1.4 lb/MWh on a boiler operating day average basis. Owners and operators of affected sources electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (u)(3)(i) through (iv) of this section.

(i) You must monitor CO emissions using a CEMS according to the procedures specified in paragraphs (u)(3)(i)(A) through (D) of this section.

(A) The CO CEMS must be installed, certified, maintained, and operated according to the provisions in § 60.58b(i)(3) of subpart Eb of this part.

(B) Each 1-hour CO emissions average is calculated using the data points generated by the CO CEMS expressed in parts per million by volume corrected to 3 percent oxygen (dry basis).

(C) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. At least two data points per hour must be used to calculate each 1-hour average.

(D) Quarterly accuracy determinations and daily calibration drift tests for the CO CEMS must be performed in accordance with procedure 1 in appendix F of this part.

(ii) You must calculate the 1-hour average CO emissions levels for each boiler operating day by multiplying the average hourly CO output concentration measured by the CO CEMS times the corresponding average hourly flue gas flow rate and divided by the corresponding average hourly useful energy output from the affected source. The 24-hour average CO emission level is determined by calculating the arithmetic average of the hourly CO emission levels computed for each boiler operating day.

(iii) You must evaluate the preceding 24-hour average CO emission level each boiler operating day excluding periods of affected source startup, shutdown, or malfunction. If the 24-hour average CO emission level is greater than 1.4 lb/MWh, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high emission incident and, take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the 24-hour average CO emission level to 1.4 lb/MWh or less.

(iv) You must record the CO measurements and calculations performed according to paragraph (u)(3) of this section and any corrective actions taken. The record of corrective action taken must include the date and time during which the 24-hour average CO emission level was greater than 1.4 lb/MWh, and the date, time, and description of the corrective action.

(v) The owner or operator of an affected facility using a CEMS measuring PM emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (v)(1) through (v)(3).

(1) The owner or operator shall conduct a performance evaluation of the CEMS according to the applicable requirements of § 60.13, Performance Specification 11 in appendix B of this part, and procedure 2 in appendix F of this part.

(2) During each relative accuracy test run of the CEMS required by Performance Specification 11 in appendix B of this part, PM and $O_2$ (or $CO_2$) data shall be collected concurrently (or within a 30-to 60-minute period) by both the CEMS and conducting performance tests using the following test methods.

(i) For PM, EPA Reference Method 5, 5B, or 17 of appendix A of this part shall be used.

(ii) For $O_2$ (or $CO_2$), EPA Reference Method 3, 3A, or 3B of appendix A of this part, as applicable shall be used.

(3) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(w)(1) Except as provided for under paragraphs (w)(2), (w)(3), and (w)(4) of this section, the $SO_2$, $NO_X$, $CO_2$, and $O_2$ CEMS required under paragraphs (b) through (d) of this section shall be installed, certified, and operated in accordance with the applicable procedures in Performance Specification 2 or 3 in appendix B to this part or according to the procedures in appendices A and B to part 75 of this chapter. Daily calibration drift assessments and quarterly accuracy determinations shall be done in accordance with Procedure 1 in appendix F to this part, and a data assessment report (DAR), prepared according to section 7 of Procedure 1 in appendix F to this part, shall be submitted with each compliance report required under § 60.51Da., the owner or operator may elect to implement the following alternative data accuracy assessment procedures:

(2) As an alternative to meeting the requirements of paragraph (w)(1) of this section, an owner or operator may elect to may elect to implement the following alternative data accuracy assessment procedures. For all required $CO_2$ and $O_2$ CEMS and for $SO_2$ and $NO_X$ CEMS with span values greater than 100 ppm, the daily calibration error test and calibration adjustment procedures described in sections 2.1.1 and 2.1.3 of appendix B to part 75 of this chapter may be followed instead of the CD assessment procedures in Procedure 1, section 4.1 of appendix F of this part. If this option is selected, the data validation and out-of-control provisions in sections 2.1.4 and 2.1.5 of appendix B to part 75 of this chapter shall be followed instead of the excessive CD and out-of-control criteria in Procedure 1, section 4.3 of appendix F to this part. For the purposes of data validation under this subpart, the excessive CD and out-of-control criteria in Procedure 1, section 4.3 of appendix F to this part shall apply to $SO_2$ and $NO_X$ span values less than 100 ppm;

(3) As an alternative to meeting the requirements of paragraph (w)(1) of this section, an owner or operator may elect to may elect to implement the following alternative data accuracy assessment procedures. For all required $CO_2$ and $O_2$ CEMS and for $SO_2$ and $NO_X$ CEMS with span values greater than 30 ppm, quarterly linearity checks may be performed in accordance with section 2.2.1 of appendix B to part 75 of this chapter, instead of performing the cylinder gas audits (CGAs) described in Procedure 1, section 5.1.2 of appendix F to this part. If this option is selected: The frequency of the linearity checks shall be as specified in section 2.2.1 of appendix B to part 75 of this chapter; the applicable linearity specifications in section 3.2 of appendix A to part 75 of this chapter shall be met; the data validation and out-of-control criteria in section 2.2.3 of appendix B to part 75 of this chapter shall be followed instead of the excessive audit inaccuracy and out-of-control criteria in Procedure 1, section 5.2 of appendix F to this part; and the grace period provisions in section 2.2.4 of appendix B to part 75 of this chapter shall apply. For the purposes of data validation under this subpart, the cylinder gas audits described in Procedure 1, section 5.1.2 of appendix F to this part shall be performed for $SO_2$ and $NO_X$ span values less than or equal to 30 ppm;

(4) As an alternative to meeting the requirements of paragraph (w)(1) of this section, an owner or operator may elect to may elect to implement the following alternative data accuracy assessment procedures. For $SO_2$, $CO_2$, and $O_2$ CEMS and for $NO_X$ CEMS, RATAs may be performed in accordance with section 2.3 of appendix B to part 75 of this chapter instead of following the procedures described in Procedure 1, section 5.1.1 of appendix F to this part. If this option is selected: The frequency of each RATA shall be as specified in section 2.3.1 of appendix B to part 75 of this chapter; the applicable relative accuracy specifications shown in Figure 2 in appendix B to part 75 of this chapter shall be met; the data validation and out-of-control criteria in section 2.3.2 of appendix B to part 75 of this chapter shall be followed instead of the excessive audit inaccuracy and out-of-control criteria in Procedure 1, section 5.2 of appendix F to this part; and the grace period provisions in section 2.3.3 of appendix B to part 75 of this chapter shall apply. For the purposes of data validation under this subpart, the relative accuracy specification in section 13.2 of Performance

Specification 2 in appendix B to this part shall be met on a lb/MMBtu basis for $SO_2$ (regardless of the $SO_2$ emission level during the RATA), and for $NO_X$ when the average $NO_X$ emission rate measured by the reference method during the RATA is less than 0.100 lb/MMBtu;

(5) If the owner or operator elects to implement the alternative data assessment procedures described in paragraphs (w)(2) through (w)(4) of this section, each data assessment report shall include a summary of the results of all of the RATAs, linearity checks, CGAs, and calibration error or drift assessments required by paragraphs (w)(2) through (w)(4) of this section.

**§ 60.50Da Compliance determination procedures and methods.**

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the methods in appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section for $SO_2$ and $NO_X$. Acceptable alternative methods are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the PM standards in § 60.42Da as follows:

(1) The dry basis F factor ($O_2$) procedures in Method 19 of appendix A of this part shall be used to compute the emission rate of PM.

(2) For the particular matter concentration, Method 5 of appendix A of this part shall be used at affected facilities without wet FGD systems and Method 5B of appendix A of this part shall be used after wet FGD systems.

(i) The sampling time and sample volume for each run shall be at least 120 minutes and 1.70 dscm (60 dscf). The probe and filter holder heating system in the sampling train may be set to provide an average gas temperature of no greater than 160±14 °C (320±25 °F).

(ii) For each particulate run, the emission rate correction factor, integrated or grab sampling and analysis procedures of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration. The $O_2$ sample shall be obtained simultaneously with, and at the same traverse points as, the particulate run. If the particulate run has more than 12 traverse points, the $O_2$ traverse points may be reduced to 12 provided that Method 1 of appendix A of this part is used to locate the 12 $O_2$ traverse points. If the grab sampling procedure is used, the $O_2$ concentration for the run shall be the arithmetic mean of the sample $O_2$ concentrations at all traverse points.

(3) Method 9 of appendix A of this part and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator shall determine compliance with the $SO_2$ standards in § 60.43Da as follows:

(1) The percent of potential $SO_2$ emissions (%Ps) to the atmosphere shall be computed using the following equation:

$$\%P_s = \frac{(100 - \%R_f)(100 - \%R_g)}{100}$$

Where:

%Ps = Percent of potential $SO_2$ emissions, percent;

%Rf = Percent reduction from fuel pretreatment, percent; and

%Rg = Percent reduction by $SO_2$ control system, percent.

(2) The procedures in Method 19 of appendix A of this part may be used to determine percent reduction ($\%R_f$) of sulfur by such processes as fuel pretreatment (physical coal cleaning, hydrodesulfurization of fuel oil, etc.), coal pulverizers, and bottom and fly ash interactions. This determination is optional.

(3) The procedures in Method 19 of appendix A of this part shall be used to determine the percent $SO_2$ reduction ($\%R_g$) of any $SO_2$ control system. Alternatively, a combination of an ''as fired'' fuel monitor and emission rates measured after the control system, following the procedures in Method 19 of appendix A of this part, may be used if the percent reduction is calculated using the average emission rate from the $SO_2$ control device and the average $SO_2$ input rate from the ''as fired'' fuel analysis for 30 successive boiler operating days.

(4) The appropriate procedures in Method 19 of appendix A of this part shall be used to determine the emission rate.

(5) The CEMS in § 60.49Da(b) and (d) shall be used to determine the concentrations of $SO_2$ and $CO_2$ or $O_2$.

(d) The owner or operator shall determine compliance with the $NO_X$ standard in § 60.44Da as follows:

(1) The appropriate procedures in Method 19 of appendix A of this part shall be used to determine the emission rate of $NO_X$.

(2) The continuous monitoring system in § 60.49Da(c) and (d) shall be used to determine the concentrations of $NO_X$ and $CO_2$ or $O_2$.

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5 or 5B of appendix A of this part, Method 17 of appendix A of this part may be used at facilities with or without wet FGD systems if the stack temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of §§ 2.1 and 2.3 of Method 5B of appendix A of this part may be used in Method 17 of appendix A of this part only if it is used after wet FGD systems. Method 17 of appendix A of this part shall not be used after wet FGD systems if the effluent is saturated or laden with water droplets.

(2) The $F_c$ factor ($CO_2$) procedures in Method 19 of appendix A of this part may be used to compute the emission rate of PM under the stipulations of § 60.46(d)(1). The $CO_2$ shall be determined in the same manner as the $O_2$ concentration.

(f) Electric utility combined cycle gas turbines are performance tested for PM, $SO_2$, and $NO_X$ using the procedures of Method 19 of appendix A of this part. The $SO_2$ and $NO_X$ emission rates from the gas turbine used in Method 19 of appendix A of this part calculations are determined when the gas turbine is performance tested under subpart GG of this part. The potential uncontrolled PM emission rate from a gas turbine is defined as 17 ng/J (0.04 lb/MMBtu) heat input.

(g) For the purposes of determining compliance with the emission limits in § 60.45Da, the owner or operator of an electric utility steam generating unit which is also a cogeneration unit shall use the procedures in paragraphs (g)(1) and (2) of this section to calculate emission rates based on electrical output to the grid plus 75 percent of the equivalent electrical energy (measured relative to ISO conditions) in the unit's process stream.

(1) All conversions from Btu/hr unit input to MW unit output must use equivalents found in 40 CFR 60.40(a)(1) for electric utilities (*i.e.*, 250 MMBtu/hr input to an electric utility steam generating unit is equivalent to 73 MW input to the electric utility steam generating unit); 73 MW input to the electric utility steam generating unit is equivalent to 25 MW output from the boiler electric utility steam generating unit; therefore, 250 MMBtu input to the electric utility steam generating unit is equivalent to 25 MW output from the electric utility steam generating unit).

(2) Use the Equation 5 in this section to determine the cogeneration Hg emission rate over a specific compliance period.

$$ER_{cogen} = \frac{M}{\left(V_{grid} + 0.75 \times V_{process}\right)} \qquad \text{(Eq. 5)}$$

Where:

$ER_{cogen}$ = Cogeneration Hg emission rate over a compliance period in lb/MWh;

E = Mass of Hg emitted from the stack over the same compliance period (lb);

$V_{grid}$ = Amount of energy sent to the grid over the same compliance period (MWh); and

$V_{process}$ = Amount of energy converted to steam for process use over the same compliance period (MWh).

(h) The owner or operator shall determine compliance with the Hg limit in § 60.45Da according to the procedures in paragraphs (h)(1) through (3) of this section.

(1) The initial performance test shall be commenced by the applicable date specified in § 60.8(a). The required CEMS must be certified prior to commencing the test. The performance test consists of collecting hourly Hg emission data (lb/MWh) with the CEMS for 12 successive months of unit operation (excluding hours of unit startup, shutdown and malfunction). The average Hg emission rate is calculated for each month, and then the weighted, 12-month average Hg emission rate is calculated according to paragraph (h)(2) or (h)(3) of this section, as applicable. If, for any month in the initial performance test, the minimum data capture requirement in § 60.49Da(p)(4)(i) is not met, the owner or operator shall report a substitute Hg emission rate for that month, as follows. For the first such month, the substitute monthly Hg emission rate shall be the arithmetic average of all valid hourly Hg emission rates recorded to date. For any subsequent month(s) with insufficient data capture, the substitute monthly Hg emission rate shall be the highest valid hourly Hg emission rate recorded to date. When the 12-month average Hg emission rate for the initial performance test is calculated, for each month in which there was insufficient data capture, the substitute monthly Hg emission rate shall be weighted according to the number of unit operating hours in that month. Following the initial performance test, the owner or operator shall demonstrate compliance by calculating the weighted average of all monthly Hg emission rates (in lb/MWh) for each 12 successive calendar months, excluding data obtained during startup, shutdown, or malfunction.

(2) If a CEMS is used to demonstrate compliance, follow the procedures in paragraphs (h)(2)(i) through (iii) of this section to determine the 12-month rolling average.

(i) Calculate the total mass of Hg emissions over a month (M), in lb, using either Equation 6 in paragraph (h)(2)(i)(A) of this section or Equation 7 in paragraph (h)(2)(i)(B) of this section, in conjunction with Equation 8 in paragraph (h)(2)(i)(C) of this section.

(A) If the Hg CEMS measures Hg concentration on a wet basis, use Equation 6 below to calculate the Hg mass emissions for each valid hour:

$$E_h = KC_h \; Q_h \; t_h \qquad \text{(Eq. 6)}$$

Where:

$E_h$ = Hg mass emissions for the hour, (lb);

K = Units conversion constant, $6.24 \times 10^{-11}$ lb-scm/μgm-scf;

$C_h$ = Hourly $H_g$ concentration, wet basis, (μgm/scm);

$Q_h$ = Hourly stack gas volumetric flow rate, (scfh); and

$t_h$ = Unit operating time, i.e., the fraction of the hour for which the unit operated. For example, th = 0.50 for a half-hour of unit operation and 1.00 for a full hour of operation.

(B) If the Hg CEMS measures Hg concentration on a dry basis, use Equation 7 below to calculate the Hg mass emissions for each valid hour:

$$E_h = KC_h \; Q_h \; t_h \; \left(1 - B_{ws}\right) \qquad \text{(Eq. 7)}$$

Where:

$E_h$ = Hg mass emissions for the hour, (lb);

K = Units conversion constant, $6.24 \times 10^{-11}$ lb-scm/μgm-scf;

$C_h$ = Hourly Hg concentration, dry basis, (μgm/dscm);

$Q_h$ = Hourly stack gas volumetric flow rate, (scfh);

$t_h$ = Unit operating time, *i.e.*, the fraction of the hour for which the unit operated; and

$B_{ws}$ = Stack gas moisture content, expressed as a decimal fraction (*e.g.*, for 8 percent $H_2O$, $B_{ws}$ = 0.08).

(C) Use Equation 8, below, to calculate M, the total mass of Hg emitted for the month, by summing the hourly masses derived from Equation 6 or 7 (as applicable):

$$M = \sum_{h=1}^{n} E_h \qquad \text{(Eq. 8)}$$

M = Total Hg mass emissions for the month, (lb);

$E_h$ = Hg mass emissions for hour ''h'', from Equation 6 or 7 of this section, (lb); and

n = Number of unit operating hours in the month with valid CE and electrical output data, excluding hours of unit startup, shutdown and malfunction.

(ii) Calculate the monthly Hg emission rate on an output basis (lb/MWh) using Equation 9, below. For a cogeneration unit, use Equation 5 in paragraph (g) of this section instead.

$$ER = \frac{M}{P} \qquad \text{(Eq. 9)}$$

Where:

ER = Monthly Hg emission rate, (lb/MWh);

M = Total mass of Hg emissions for the month, from Equation 8, above, (lb); and

P = Total electrical output for the month, for the hours used to calculate M, (MWh).

(iii) Until 12 monthly Hg emission rates have been accumulated, calculate and report only the monthly averages. Then, for each subsequent calendar month, use Equation 10 below to calculate the 12-month rolling average as a weighted average of the Hg emission rate for the current month and the Hg emission rates for the previous 11 months, with one exception. Calendar months in which the unit does not operate (zero unit operating hours) shall not be included in the 12-month rolling average.

$$E_{avg} = \frac{\sum_{i=1}^{12}\left(ER_i \times n_i\right)}{\sum_{i=1}^{12} n_i} \qquad \text{(Eq. 10)}$$

Where:

$E_{avg}$ = Weighted 12-month rolling average Hg emission rate, (lb/MWh);

$ER_i$ = Monthly Hg emission rate, for month ''i'', (lb/MWh); and

n = Number of unit operating hours in month ''i'' with valid CEM and electrical output data, excluding hours of unit startup, shutdown, and malfunction.

(3) If a sorbent trap monitoring system is used in lieu of a Hg CEMS, as described in § 75.15 of this chapter and in appendix K to part 75 of this chapter, calculate the monthly Hg emission rates using Equations 7 through 9 of this section, except that for a particular pair of sorbent traps, $C_h$ in Equation 7 shall be the flow-proportional average Hg concentration measured over the data collection period.

(i) Daily calibration drift (CD) tests and quarterly accuracy determinations shall be performed for Hg CEMS in accordance with Procedure 1 of appendix F to this part. For the CD assessments, you may use either elemental mercury or mercuric chloride (Hg° $HgCl_2$) standards. The four

quarterly accuracy determinations shall consist of one RATA and three measurement error (ME) tests using $HgCl_2$ standards, as described in section 8.3 of Performance Specification 12–A in appendix B to this part (note: Hg° standards may be used if the Hg monitor does not have a converter). Alternatively, the owner or operator may implement the applicable daily, weekly, quarterly, and annual quality assurance (QA) requirements for Hg CEMS in appendix B to part 75 of this chapter, in lieu of the QA procedures in appendices B and F to this part. Annual RATA of sorbent trap monitoring systems shall be performed in accordance with appendices A and B to part 75 of this chapter, and all other quality assurance requirements specified in appendix K to part 75 of this chapter shall be met for sorbent trap monitoring systems.

**§ 60.51Da Reporting requirements.**

(a) For $SO_2$, $NO_X$, PM, and Hg emissions, the performance test data from the initial and subsequent performance test and from the performance evaluation of the continuous monitors (including the transmissometer) are submitted to the Administrator.

(b) For $SO_2$ and $NO_X$ the following information is reported to the Administrator for each 24-hour period.

(1) Calendar date.

(2) The average $SO_2$ and $NO_X$ emission rates (ng/J or lb/MMBtu) for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the emission standards; and, description of corrective actions taken.

(3) Percent reduction of the potential combustion concentration of $SO_2$ for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the standard; and, description of corrective actions taken.

(4) Identification of the boiler operating days for which pollutant or diluent data have not been obtained by an approved method for at least 75 percent of the hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken.

(5) Identification of the times when emissions data have been excluded from the calculation of average emission rates because of startup, shutdown, malfunction ($NO_X$ only), emergency conditions ($SO_2$ only), or other reasons, and justification for excluding data for reasons other than startup, shutdown, malfunction, or emergency conditions.

(6) Identification of ''F'' factor used for calculations, method of determination, and type of fuel combusted.

(7) Identification of times when hourly averages have been obtained based on manual sampling methods.

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS.

(9) Description of any modifications to CEMS which could affect the ability of the CEMS to comply with Performance Specifications 2 or 3.

(c) If the minimum quantity of emission data as required by § 60.49Da is not obtained for any 30 successive boiler operating days, the following information obtained under the requirements of § 60.48Da(h) is reported to the Administrator for that 30-day period:

(1) The number of hourly averages available for outlet emission rates (no) and inlet emission rates ($n_i$) as applicable.

(2) The standard deviation of hourly averages for outlet emission rates ($s_o$) and inlet emission rates ($s_i$) as applicable.

(3) The lower confidence limit for the mean outlet emission rate ($E_o$*) and the upper confidence limit for the mean inlet emission rate ($E_i$*) as applicable.

(4) The applicable potential combustion concentration.

(5) The ratio of the upper confidence limit for the mean outlet emission rate ($E_o$*) and the allowable emission rate ($E_{std}$) as applicable.

(d) If any standards under § 60.43Da are exceeded during emergency conditions because of control system malfunction, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating if emergency conditions existed and requirements under § 60.48Da(d) were met during each period, and

(2) Listing the following information:

(i) Time periods the emergency condition existed;

(ii) Electrical output and demand on the owner or operator's electric utility system and the affected facility;

(iii) Amount of power purchased from interconnected neighboring utility companies during the emergency period;

(iv) Percent reduction in emissions achieved;

(v) Atmospheric emission rate (ng/J) of the pollutant discharged; and

(vi) Actions taken to correct control system malfunction.

(e) If fuel pretreatment credit toward the $SO_2$ emission standard under § 60.43Da is claimed, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating what percentage cleaning credit was taken for the calendar quarter, and whether the credit was determined in accordance with the provisions of § 60.50Da and Method 19 of appendix A of this part; and

(2) Listing the quantity, heat content, and date each pretreated fuel shipment was received during the previous quarter; the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the previous quarter.

(f) For any periods for which opacity, $SO_2$ or $NO_X$ emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(g) For Hg, the following information shall be reported to the Administrator:

(1) Company name and address;

(2) Date of report and beginning and ending dates of the reporting period;

(3) The applicable Hg emission limit (lb/MWh); and

(4) For each month in the reporting period:

(i) The number of unit operating hours;

(ii) The number of unit operating hours with valid data for Hg concentration, stack gas flow rate, moisture (if required), and electrical output;

(iii) The monthly Hg emission rate (lb/MWh);

(iv) The number of hours of valid data excluded from the calculation of the monthly Hg emission rate, due to unit startup, shutdown and malfunction; and

(v) The 12-month rolling average Hg emission rate (lb/MWh); and

(5) The data assessment report (DAR) required by appendix F to this part, or an equivalent summary of QA test results if the QA of part 75 of this chapter are implemented.

(h) The owner or operator of the affected facility shall submit a signed statement indicating whether:

(1) The required CEMS calibration, span, and drift checks or other periodic audits have or have not been performed as specified.

(2) The data used to show compliance was or was not obtained in accordance with approved methods and procedures

of this part and is representative of plant performance.

(3) The minimum data requirements have or have not been met; or, the minimum data requirements have not been met for errors that were unavoidable.

(4) Compliance with the standards has or has not been achieved during the reporting period.

(i) For the purposes of the reports required under § 60.7, periods of excess emissions are defined as all 6-minute periods during which the average opacity exceeds the applicable opacity standards under § 60.42Da(b). Opacity levels in excess of the applicable opacity standard and the date of such excesses are to be submitted to the Administrator each calendar quarter.

(j) The owner or operator of an affected facility shall submit the written reports required under this section and subpart A to the Administrator semiannually for each six-month period. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period.

(k) The owner or operator of an affected facility may submit electronic quarterly reports for $SO_2$ and/or $NO_X$ and/or opacity and/or Hg in lieu of submitting the written reports required under paragraphs (b), (g), and (i) of this section. The format of each quarterly electronic report shall be coordinated with the permitting authority. The electronic report(s) shall be submitted no later than 30 days after the end of the calendar quarter and shall be accompanied by a certification statement from the owner or operator, indicating whether compliance with the applicable emission standards and minimum data requirements of this subpart was achieved during the reporting period. Before submitting reports in the electronic format, the owner or operator shall coordinate with the permitting authority to obtain their agreement to submit reports in this alternative format.

### § 60.52Da Recordkeeping requirements.

The owner or operator of an affected facility subject to the emissions limitations in § 60.45Da shall provide notifications in accordance with § 60.7(a) and shall maintain records of all information needed to demonstrate compliance including performance tests, monitoring data, fuel analyses, and calculations, consistent with the requirements of § 60.7(f).

## Subpart Db—[Amended]

■ 5. Subpart Db is revised to read as follows

### Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

Sec.
60.40b Applicability and delegation of authority.
60.41b Definitions.
60.42b Standard for sulfur dioxide ($SO_2$).
60.43b Standard for particulate matter (PM).
60.44b Standard for nitrogen oxides ($NO_X$).
60.45b Compliance and performance test methods and procedures for sulfur dioxide.
60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.
60.47b Emission monitoring for sulfur dioxide.
60.48b Emission monitoring for particulate matter and nitrogen oxides.
60.49b Reporting and recordkeeping requirements.

### Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

### § 60.40b Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)).

(b) Any affected facility meeting the applicability requirements under paragraph (a) of this section and commencing construction, modification, or reconstruction after June 19, 1984, but on or before June 19, 1986, is subject to the following standards:

(1) Coal-fired affected facilities having a heat input capacity between 29 and 73 MW (100 and 250 MMBtu/hr), inclusive, are subject to the particulate matter (PM) and nitrogen oxides ($NO_X$) standards under this subpart.

(2) Coal-fired affected facilities having a heat input capacity greater than 73 MW (250 MMBtu/hr) and meeting the applicability requirements under subpart D (Standards of performance for fossil-fuel-fired steam generators; § 60.40) are subject to the PM and $NO_X$ standards under this subpart and to the sulfur dioxide ($SO_2$) standards under subpart D (§ 60.43).

(3) Oil-fired affected facilities having a heat input capacity between 29 and 73 MW (100 and 250 MMBtu/hr), inclusive, are subject to the $NO_X$ standards under this subpart.

(4) Oil-fired affected facilities having a heat input capacity greater than 73 MW (250 MMBtu/hr) and meeting the applicability requirements under subpart D (Standards of performance for fossil-fuel-fired steam generators; § 60.40) are also subject to the $NO_X$ standards under this subpart and the PM and $SO_2$ standards under subpart D (§ 60.42 and § 60.43).

(c) Affected facilities that also meet the applicability requirements under subpart J (Standards of performance for petroleum refineries; § 60.104) are subject to the PM and $NO_X$ standards under this subpart and the $SO_2$ standards under subpart J (§ 60.104).

(d) Affected facilities that also meet the applicability requirements under subpart E (Standards of performance for incinerators; § 60.50) are subject to the $NO_X$ and PM standards under this subpart.

(e) Steam generating units meeting the applicability requirements under subpart Da (Standards of performance for electric utility steam generating units; § 60.40Da) are not subject to this subpart.

(f) Any change to an existing steam generating unit for the sole purpose of combusting gases containing total reduced sulfur (TRS) as defined under § 60.281 is not considered a modification under § 60.14 and the steam generating unit is not subject to this subpart.

(g) In delegating implementation and enforcement authority to a State under section 111(c) of the Clean Air Act, the following authorities shall be retained by the Administrator and not transferred to a State.

(1) Section 60.44b(f).

(2) Section 60.44b(g).

(3) Section 60.49b(a)(4).

(h) Any affected facility that meets the applicability requirements and is subject to subpart Ea, subpart Eb, or subpart AAAA of this part is not covered by this subpart.

(i) Heat recovery steam generators that are associated with combined cycle gas turbines and that meet the applicability requirements of subpart GG or KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than 29 MW (100 MMBtu/hr) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part.)

(j) Any affected facility meeting the applicability requirements under paragraph (a) of this section and commencing construction, modification, or reconstruction after June 19, 1986 is not subject to subpart D (Standards of

Performance for Fossil-Fuel-Fired Steam Generators, § 60.40).

(k) Any affected facility that meets the applicability requirements and is subject to an EPA approved State or Federal section 111(d)/129 plan implementing subpart Cb or subpart BBBB of this part is not covered by this subpart.

**§ 60.41b Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

*Annual capacity factor* means the ratio between the actual heat input to a steam generating unit from the fuels listed in § 60.42b(a), § 60.43b(a), or § 60.44b(a), as applicable, during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours during a calendar year at the maximum steady state design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility in a calendar year.

*Byproduct/waste* means any liquid or gaseous substance produced at chemical manufacturing plants, petroleum refineries, or pulp and paper mills (except natural gas, distillate oil, or residual oil) and combusted in a steam generating unit for heat recovery or for disposal. Gaseous substances with carbon dioxide ($CO_2$) levels greater than 50 percent or carbon monoxide levels greater than 10 percent are not byproduct/waste for the purpose of this subpart.

*Chemical manufacturing plants* mean industrial plants that are classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 28.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, coke oven gas, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

*Coal refuse* means any byproduct of coal mining or coal cleaning operations with an ash content greater than 50 percent, by weight, and a heating value less than 13,900 kJ/kg (6,000 Btu/lb) on a dry basis.

*Cogeneration*, also known as combined heat and power, means a facility that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

*Coke oven gas* means the volatile constituents generated in the gaseous exhaust during the carbonization of bituminous coal to form coke.

*Combined cycle system* means a system in which a separate source, such as a gas turbine, internal combustion engine, kiln, etc., provides exhaust gas to a steam generating unit.

*Conventional technology* means wet flue gas desulfurization (FGD) technology, dry FGD technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

*Distillate oil* means fuel oils that contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Dry flue gas desulfurization technology* means a $SO_2$ control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline reagent and water, whether introduced separately or as a premixed slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry flue gas desulfurization technology include but are not limited to lime and sodium.

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

*Emerging technology* means any $SO_2$ control system that is not defined as a conventional technology under this section, and for which the owner or operator of the facility has applied to the Administrator and received approval to operate as an emerging technology under § 60.49b(a)(4).

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

*Fluidized bed combustion technology* means combustion of fuel in a bed or series of beds (including but not limited to bubbling bed units and circulating bed units) of limestone aggregate (or other sorbent materials) in which these materials are forced upward by the flow of combustion air and the gaseous products of combustion.

*Fuel pretreatment* means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

*Full capacity* means operation of the steam generating unit at 90 percent or more of the maximum steady-state design heat input capacity.

*Gaseous fuel* means any fuel that is present as a gas at ISO conditions.

*Gross output* means the gross useful work performed by the steam generated. For units generating only electricity, the gross useful work performed is the gross electrical output from the turbine/generator set. For cogeneration units, the gross useful work performed is the gross electrical or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output (i.e., steam delivered to an industrial process).

*Heat input* means heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

*Heat release rate* means the steam generating unit design heat input capacity (in MW or Btu/hr) divided by the furnace volume (in cubic meters or cubic feet); the furnace volume is that volume bounded by the front furnace wall where the burner is located, the furnace side waterwall, and extending to the level just below or in front of the first row of convection pass tubes.

*Heat transfer medium* means any material that is used to transfer heat from one point to another point.

*High heat release rate* means a heat release rate greater than 730,000 J/sec-$m^3$ (70,000 Btu/hr-$ft^3$).

*ISO Conditions* means a temperature of 288 Kelvin, a relative humidity of 60 percent, and a pressure of 101.3 kilopascals.

*Lignite* means a type of coal classified as lignite A or lignite B by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Low heat release rate* means a heat release rate of 730,000 J/sec-$m^3$ (70,000 Btu/hr-$ft^3$) or less.

*Mass-feed stoker steam generating unit* means a steam generating unit where solid fuel is introduced directly into a retort or is fed directly onto a grate where it is combusted.

*Maximum heat input capacity* means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the steam generating unit.

*Municipal-type solid waste* means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass and rock.

*Natural gas* means: (1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17).

*Noncontinental area* means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

*Oil* means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.

*Petroleum refinery* means industrial plants as classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.

*Potential sulfur dioxide emission rate* means the theoretical $SO_2$ emissions (nanograms per joule (ng/J) or lb/MMBtu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

*Process heater* means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

*Pulp and paper mills* means industrial plants that are classified by the Department of Commerce under North American Industry Classification System (NAICS) Code 322 or Standard Industrial Classification (SIC) Code 26.

*Pulverized coal-fired steam generating unit* means a steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension. This includes both conventional pulverized coal-fired and micropulverized coal-fired steam generating units. Residual oil means crude oil, fuel oil numbers 1 and 2 that have a nitrogen content greater than 0.05 weight percent, and all fuel oil numbers 4, 5 and 6, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Spreader stoker steam generating unit* means a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

*Steam generating unit* means a device that combusts any fuel or byproduct/waste and produces steam or heats water or any other heat transfer medium. This term includes any municipal-type solid waste incinerator with a heat recovery steam generating unit or any steam generating unit that combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters as they are defined in this subpart.

*Steam generating unit operating day* means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

*Very low sulfur oil* means for units constructed, reconstructed, or modified on or before February 28, 2005, an oil that contains no more than 0.5 weight percent sulfur or that, when combusted without $SO_2$ emission control, has a $SO_2$ emission rate equal to or less than 215 ng/J (0.5 lb/MMBtu) heat input. For units constructed, reconstructed, or modified after February 28, 2005, *very low sulfur oil* means an oil that contains no more than 0.3 weight percent sulfur or that, when combusted without $SO_2$ emission control, has a $SO_2$ emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input.

*Wet flue gas desulfurization technology* means a $SO_2$ control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gas with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet flue gas desulfurization technology include, but are not limited to, lime, limestone, and sodium.

*Wet scrubber system* means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of PM or $SO_2$.

*Wood* means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

**§ 60.42b Standard for sulfur dioxide ($SO_2$).**

(a) Except as provided in paragraphs (b), (c), (d), or (k) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal or oil shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction) and the emission limit determined according to the following formula:

$$E_s = \frac{(K_a H_a + K_b H_b)}{(H_a + H_b)}$$

Where:

$E_s$ = $SO_2$ emission limit, in ng/J or lb/MMBtu heat input;

$K_a$ = 520 ng/J (or 1.2 lb/MMBtu);

$K_b$ = 340 ng/J (or 0.80 lb/MMBtu);

$H_a$ = Heat input from the combustion of coal, in J (MMBtu); and

$H_b$ = Heat input from the combustion of oil, in J (MMBtu).

Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels or heat derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) or 20 percent (0.20) of the potential $SO_2$ emission rate (80 percent reduction) and

520 ng/J (1.2 lb/MMBtu) heat input. If coal or oil is fired with coal refuse, the affected facility is subject to paragraph (a) or (d) of this section, as applicable.

(c) On and after the date on which the performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that combusts coal or oil, either alone or in combination with any other fuel, and that uses an emerging technology for the control of $SO_2$ emissions, shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 50 percent of the potential $SO_2$ emission rate (50 percent reduction) and that contain $SO_2$ in excess of the emission limit determined according to the following formula:

$$E_s = \frac{(K_c H_c + K_d H_d)}{(H_c + H_d)}$$

Where:

$E_s$ = $SO_2$ emission limit, in ng/J or lb/MM Btu heat input;

$K_c$ = 260 ng/J (or 0.60 lb/MMBtu);

$K_d$ = 170 ng/J (or 0.40 lb/MMBtu);

$H_c$ = Heat input from the combustion of coal, in J (MMBtu); and

$H_d$ = Heat input from the combustion of oil, in J (MMBtu).

Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels, or from the heat input derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005 and listed in paragraphs (d)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/MMBtu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under paragraphs (d)(1), (2), (3) or (4) of this section.

(1) Affected facilities that have an annual capacity factor for coal and oil of 30 percent (0.30) or less and are subject to a federally enforceable permit limiting the operation of the affected facility to an annual capacity factor for coal and oil of 30 percent (0.30) or less;

(2) Affected facilities located in a noncontinental area; or

(3) Affected facilities combusting coal or oil, alone or in combination with any fuel, in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal and oil in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from the exhaust gases entering the duct burner; or

(4) The affected facility burns coke oven gas alone or in combination with natural gas or very low sulfur distillate oil.

(e) Except as provided in paragraph (f) of this section, compliance with the emission limits, fuel oil sulfur limits, and/or percent reduction requirements under this section are determined on a 30-day rolling average basis.

(f) Except as provided in paragraph (j)(2) of this section, compliance with the emission limits or fuel oil sulfur limits under this section is determined on a 24-hour average basis for affected facilities that (1) have a federally enforceable permit limiting the annual capacity factor for oil to 10 percent or less, (2) combust only very low sulfur oil, and (3) do not combust any other fuel.

(g) Except as provided in paragraph (i) of this section and § 60.45b(a), the $SO_2$ emission limits and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(h) Reductions in the potential $SO_2$ emission rate through fuel pretreatment are not credited toward the percent reduction requirement under paragraph (c) of this section unless:

(1) Fuel pretreatment results in a 50 percent or greater reduction in potential $SO_2$ emissions and

(2) Emissions from the pretreated fuel (without combustion or post-combustion $SO_2$ control) are equal to or less than the emission limits specified in paragraph (c) of this section.

(i) An affected facility subject to paragraph (a), (b), or (c) of this section may combust very low sulfur oil or natural gas when the $SO_2$ control system is not being operated because of malfunction or maintenance of the $SO_2$ control system.

(j) Percent reduction requirements are not applicable to affected facilities combusting only very low sulfur oil. The owner or operator of an affected facility combusting very low sulfur oil shall demonstrate that the oil meets the definition of very low sulfur oil by: (1) Following the performance testing procedures as described in § 60.45b(c) or § 60.45b(d), and following the monitoring procedures as described in § 60.47b(a) or § 60.47b(b) to determine $SO_2$ emission rate or fuel oil sulfur content; or (2) maintaining fuel records as described in § 60.49b(r).

(k)(1) Except as provided in paragraphs (k)(2), (k)(3), and (k)(4) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, natural gas, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 8 percent (0.08) of the potential $SO_2$ emission rate (92 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input.

(2) Units firing only very low sulfur oil and/or a mixture of gaseous fuels with a potential $SO_2$ emission rate of 140 ng/J (0.32 lb/MMBtu) heat input or less are exempt from the $SO_2$ emissions limit in paragraph 60.42b(k)(1).

(3) Units that are located in a noncontinental area and that combust coal or oil shall not discharge any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 215 ng/J (0.50 lb/MMBtu) heat input if the affected facility combusts oil.

(4) As an alternative to meeting the requirements under paragraph (k)(1) of this section, modified facilities that combust coal or a mixture of coal with other fuels shall not cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input.

**§ 60.43b Standard for particulate matter (PM).**

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005 that combusts coal or combusts mixtures of coal with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 22 ng/J (0.051 lb/MMBtu) heat input, (i) If the affected facility combusts only coal, or

(ii) If the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels greater than 10 percent (0.10) and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(3) 86 ng/J (0.20 lb/MMBtu) heat input if the affected facility combusts coal or coal and other fuels and

(i) Has an annual capacity factor for coal or coal and other fuels of 30 percent (0.30) or less,

(ii) Has a maximum heat input capacity of 73 MW (250 MMBtu/hr) or less,

(iii) Has a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) or less for coal or coal and other solid fuels, and

(iv) Construction of the affected facility commenced after June 19, 1984, and before November 25, 1986.

(4) An affected facility burning coke oven gas alone or in combination with other fuels not subject to a PM standard under § 60.43b and not using a post-combustion technology (except a wet scrubber) for reducing PM or $SO_2$ emissions is not subject to the PM limits under § 60.43b(a).

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, and that combusts oil (or mixtures of oil with other fuels) and uses a conventional or emerging technology to reduce $SO_2$ emissions shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(c) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, and that combusts wood, or wood with other fuels, except coal, shall cause to be discharged from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility has an annual capacity factor greater than 30 percent (0.30) for wood.

(2) 86 ng/J (0.20 lb/MMBtu) heat input if (i) The affected facility has an annual capacity factor of 30 percent (0.30) or less for wood;

(ii) Is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) or less for wood; and

(iii) Has a maximum heat input capacity of 73 MW (250 MMBtu/hr) or less.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts municipal-type solid waste or mixtures of municipal-type solid waste with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 43 ng/J (0.10 lb/MMBtu) heat input;

(i) If the affected facility combusts only municipal-type solid waste; or

(ii) If the affected facility combusts municipal-type solid waste and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 86 ng/J (0.20 lb/MMBtu) heat input if the affected facility combusts municipal-type solid waste or municipal-type solid waste and other fuels; and

(i) Has an annual capacity factor for municipal-type solid waste and other fuels of 30 percent (0.30) or less;

(ii) Has a maximum heat input capacity of 73 MW (250 MMBtu/hr) or less;

(iii) Has a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) or less for municipal-type solid waste, or municipal-type solid waste and other fuels; and

(iv) Construction of the affected facility commenced after June 19, 1984, but on or before November 25, 1986.

(e) For the purposes of this section, the annual capacity factor is determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal, wood, or municipal-type solid waste, and other fuels, as applicable, by the potential heat input to the steam generating unit if the steam generating unit had been operated for 8,760 hours at the maximum heat input capacity.

(f) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(g) The PM and opacity standards apply at all times, except during periods of startup, shutdown or malfunction.

(h)(1) Except as provided in paragraphs (h)(2), (h)(3), (h)(4), and (h)(5) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 13 ng/J (0.030 lb/MMBtu) heat input,

(2) As an alternative to meeting the requirements of paragraph (h)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the initial performance test is completed or required to be completed under § 60.8, no owner or operator of an affected facility that commences modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of both:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels; and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on

an annual basis and has a maximum heat input capacity of 73 MW (250 MMBtu/h) or less shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(4) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity greater than 73 MW (250 MMBtu/h) shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 37 ng/J (0.085 lb/MMBtu) heat input.

(5) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, an owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.3 weight percent sulfur, coke oven gas, a mixture of these fuels, or either fuel (or a mixture of these fuels) in combination with other fuels not subject to a PM standard under § 60.43b and not using a post-combustion technology (except a wet scrubber) to reduce $SO_2$ or PM emissions is not subject to the PM limits under § 60.43b(h)(1).

**§ 60.44b Standard for nitrogen oxides ($NO_X$).**

(a) Except as provided under paragraphs (k) and (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that is subject to the provisions of this section and that combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the following emission limits:

| Fuel/steam generating unit type | Nitrogen oxide emission limits (expressed as $NO_2$) heat input | |
|---|---|---|
| | ng/J | lb/MMBTu |
| (1) Natural gas and distillate oil, except (4): | | |
| (i) Low heat release rate | 43 | 0.10 |
| (ii) High heat release rate | 86 | 0.20 |
| (2) Residual oil: | | |
| (i) Low heat release rate | 130 | 0.30 |
| (ii) High heat release rate | 170 | 0.40 |
| (3) Coal: | | |
| (i) Mass-feed stoker | 210 | 0.50 |
| (ii) Spreader stoker and fluidized bed combustion | 260 | 0.60 |
| (iii) Pulverized coal | 300 | 0.70 |
| (iv) Lignite, except (v) | 260 | 0.60 |
| (v) Lignite mined in North Dakota, South Dakota, or Montana and combusted in a slag tap furnace | 340 | 0.80 |
| (vi) Coal-derived synthetic fuels | 210 | 0.50 |
| (4) Duct burner used in a combined cycle system: | | |
| (i) Natural gas and distillate oil | 86 | 0.20 |
| (ii) Residual oil | 170 | 0.40 |

(b) Except as provided under paragraphs (k) and (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts mixtures of coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ in excess of a limit determined by the use of the following formula:

$$E_n = \frac{(EL_{go}H_{go}) + (EL_{ro}H_{ro}) + (EL_cH_c)}{(H_{go} + H_{ro} + H_c)}$$

Where:

$E_n$ = $NO_X$ emission limit (expressed as $NO_2$), ng/J (lb/MMBtu);

$EL_{go}$ = Appropriate emission limit from paragraph (a)(1) for combustion of natural gas or distillate oil, ng/J (lb/MMBtu);

$H_{go}$ = Heat input from combustion of natural gas or distillate oil, J (MMBtu);

$EL_{ro}$ = Appropriate emission limit from paragraph (a)(2) for combustion of residual oil, ng/J (lb/MMBtu);

$H_{ro}$ = Heat input from combustion of residual oil, J (MMBtu);

$EL_c$ = Appropriate emission limit from paragraph (a)(3) for combustion of coal, ng/J (lb/MMBtu); and

$H_c$ = Heat input from combustion of coal, J (MMBtu).

(c) Except as provided under paragraph (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts coal or oil, or a mixture of these fuels with natural gas, and wood, municipal-type solid waste, or any other fuel shall cause to be discharged into the atmosphere any gases that contain $NO_X$ in excess of the emission limit for the coal or oil, or mixtures of these fuels with natural gas combusted in the affected facility, as determined pursuant to paragraph (a) or (b) of this section, unless the affected facility has an annual capacity factor for coal or oil, or mixture of these fuels with natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, or a mixture of these fuels with natural gas.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts natural gas with wood, municipal-type solid waste, or other solid fuel, except coal, shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ in excess of 130 ng/J (0.30 lb/MMBtu) heat input unless the affected facility has an annual capacity factor for natural gas of

10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for natural gas.

(e) Except as provided under paragraph (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts coal, oil, or natural gas with byproduct/waste shall cause to be discharged into the atmosphere any gases that contain $NO_X$ in excess of the emission limit determined by the following formula unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less:

$$E_n = \frac{(EL_{go}H_{go}) + (EL_{ro}H_{ro}) + (EL_cH_c)}{(H_{go} + H_{ro} + H_c)}$$

Where:

$E_n$ = $NO_X$ emission limit (expressed as $NO_2$), ng/J (lb/MMBtu);

$EL_{go}$ = Appropriate emission limit from paragraph (a)(1) for combustion of natural gas or distillate oil, ng/J (lb/MMBtu);

$H_{go}$ = Heat input from combustion of natural gas, distillate oil and gaseous byproduct/waste, J (MMBtu);

$EL_{ro}$ = Appropriate emission limit from paragraph (a)(2) for combustion of residual oil and/or byproduct/waste, ng/J (lb/MMBtu);

$H_{ro}$ = Heat input from combustion of residual oil, J (MMBtu);

$EL_c$ = Appropriate emission limit from paragraph (a)(3) for combustion of coal, ng/J (lb/MMBtu); and

$H_c$ = Heat input from combustion of coal, J (MMBtu).

(f) Any owner or operator of an affected facility that combusts byproduct/waste with either natural gas or oil may petition the Administrator within 180 days of the initial startup of the affected facility to establish a $NO_X$ emission limit that shall apply specifically to that affected facility when the byproduct/waste is combusted. The petition shall include sufficient and appropriate data, as determined by the Administrator, such as $NO_X$ emissions from the affected facility, waste composition (including nitrogen content), and combustion conditions to allow the Administrator to confirm that the affected facility is unable to comply with the emission limits in paragraph (e) of this section and to determine the appropriate emission limit for the affected facility.

(1) Any owner or operator of an affected facility petitioning for a facility-specific $NO_X$ emission limit under this section shall:

(i) Demonstrate compliance with the emission limits for natural gas and distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, by conducting a 30-day performance test as provided in § 60.46b(e). During the performance test only natural gas, distillate oil, or residual oil shall be combusted in the affected facility; and

(ii) Demonstrate that the affected facility is unable to comply with the emission limits for natural gas and distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, when gaseous or liquid byproduct/waste is combusted in the affected facility under the same conditions and using the same technological system of emission reduction applied when demonstrating compliance under paragraph (f)(1)(i) of this section.

(2) The $NO_X$ emission limits for natural gas or distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, shall be applicable to the affected facility until and unless the petition is approved by the Administrator. If the petition is approved by the Administrator, a facility-specific $NO_X$ emission limit will be established at the $NO_X$ emission level achievable when the affected facility is combusting oil or natural gas and byproduct/waste in a manner that the Administrator determines to be consistent with minimizing $NO_X$ emissions. In lieu of amending this subpart, a letter will be sent to the facility describing the facility-specific $NO_X$ limit. The facility shall use the compliance procedures detailed in the letter and make the letter available to the public. If the Administrator determines it is appropriate, the conditions and requirements of the letter can be reviewed and changed at any point.

(g) Any owner or operator of an affected facility that combusts hazardous waste (as defined by 40 CFR part 261 or 40 CFR part 761) with natural gas or oil may petition the Administrator within 180 days of the initial startup of the affected facility for a waiver from compliance with the $NO_X$ emission limit that applies specifically to that affected facility. The petition must include sufficient and appropriate data, as determined by the Administrator, on $NO_X$ emissions from the affected facility, waste destruction efficiencies, waste composition (including nitrogen content), the quantity of specific wastes to be combusted and combustion conditions to allow the Administrator to determine if the affected facility is able to comply with the $NO_X$ emission limits required by this section. The owner or operator of the affected facility shall demonstrate that when hazardous waste is combusted in the affected facility, thermal destruction efficiency requirements for hazardous waste specified in an applicable federally enforceable requirement preclude compliance with the $NO_X$ emission limits of this section. The $NO_X$ emission limits for natural gas or distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, are applicable to the affected facility until and unless the petition is approved by the Administrator. (See 40 CFR 761.70 for regulations applicable to the incineration of materials containing polychlorinated biphenyls (PCB's).) In lieu of amending this subpart, a letter will be sent to the facility describing the facility-specific $NO_X$ limit. The facility shall use the compliance procedures detailed in the letter and make the letter available to the public. If the Administrator determines it is appropriate, the conditions and requirements of the letter can be reviewed and changed at any point.

(h) For purposes of paragraph (i) of this section, the $NO_X$ standards under this section apply at all times including periods of startup, shutdown, or malfunction.

(i) Except as provided under paragraph (j) of this section, compliance with the emission limits under this section is determined on a 30-day rolling average basis.

(j) Compliance with the emission limits under this section is determined on a 24-hour average basis for the initial performance test and on a 3-hour average basis for subsequent performance tests for any affected facilities that:

(1) Combust, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;

(2) Have a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and

(3) Are subject to a federally enforceable requirement limiting operation of the affected facility to the

firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less.

(k) Affected facilities that meet the criteria described in paragraphs (j)(1), (2), and (3) of this section, and that have a heat input capacity of 73 MW (250 MMBtu/hr) or less, are not subject to the $NO_X$ emission limits under this section.

(l) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction or reconstruction after July 9, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the following limits:

(1) If the affected facility combusts coal, oil, or natural gas, or a mixture of these fuels, or with any other fuels: A limit of 86 ng/J (0.20 lb/MMBtu) heat input unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, and natural gas; or

(2) If the affected facility has a low heat release rate and combusts natural gas or distillate oil in excess of 30 percent of the heat input on a 30-day rolling average from the combustion of all fuels, a limit determined by use of the following formula:

$$E_n = \frac{(0.10 \times H_{go}) + (0.20 \times H_r)}{(H_{go} + H_r)}$$

Where:

$E_n$ = $NO_X$ emission limit, (lb/MMBtu);

$H_{go}$ = 30-day heat input from combustion of natural gas or distillate oil; and

$H_r$ = 30-day heat input from combustion of any other fuel.

(3) After February 27, 2006, units where more than 10 percent of total annual output is electrical or mechanical may comply with an optional limit of 270 ng/J (2.1 lb/MWh) gross energy output, based on a 30-day rolling average. Units complying with this output-based limit must demonstrate compliance according to the procedures of § 60.48Da(i) of subpart Da of this part, and must monitor emissions according to § 60.49Da(c), (k), through (n) of subpart Da of this part.

**§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.**

(a) The $SO_2$ emission standards under § 60.42b apply at all times. Facilities burning coke oven gas alone or in combination with any other gaseous fuels or distillate oil and complying with the fuel based limit under § 60.42b(d) or § 60.42b(k)(2) are allowed to exceed the limit 30 operating days per calendar year for by-product plant maintenance.

(b) In conducting the performance tests required under § 60.8, the owner or operator shall use the methods and procedures in appendix A (including fuel certification and sampling) of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(c) The owner or operator of an affected facility shall conduct performance tests to determine compliance with the percent of potential $SO_2$ emission rate (% $P_s$) and the $SO_2$ emission rate ($E_s$) pursuant to § 60.42b following the procedures listed below, except as provided under paragraph (d) and (k) of this section.

(1) The initial performance test shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the $SO_2$ standards shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility.

(2) If only coal, only oil, or a mixture of coal and oil is combusted, the following procedures are used:

(i) The procedures in Method 19 of appendix A of this part are used to determine the hourly $SO_2$ emission rate ($E_{ho}$) and the 30-day average emission rate ($E_{ao}$). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system (CEMS) of § 60.47b (a) or (b).

(ii) The percent of potential $SO_2$ emission rate (%$P_s$) emitted to the atmosphere is computed using the following formula:

$$\%P_s = 100\left(1 - \frac{\%R_g}{100}\right)\left(1 - \frac{\%R_f}{100}\right)$$

Where:

%$P_s$ = Potential $SO_2$ emission rate, percent;

%$R_g$ = $SO_2$ removal efficiency of the control device as determined by Method 19 of appendix A of this part, in percent; and

%$R_f$ = $SO_2$ removal efficiency of fuel pretreatment as determined by Method 19 of appendix A of this part, in percent.

(3) If coal or oil is combusted with other fuels, the same procedures required in paragraph (c)(2) of this section are used, except as provided in the following:

(i) An adjusted hourly $SO_2$ emission rate ($E_{ho}^o$) is used in Equation 19–19 of Method 19 of appendix A of this part to compute an adjusted 30-day average emission rate ($E_{ao}^o$). The Eho° is computed using the following formula:

$$E_{ho}^o = \frac{E_{ho} - E_w(1 - X_k)}{X_k}$$

Where:

$E_{ho}^o$ = Adjusted hourly $SO_2$ emission rate, ng/J (lb/MMBtu);

$E_{ho}$ = Hourly $SO_2$ emission rate, ng/J (lb/MMBtu);

$E_w$ = $SO_2$ concentration in fuels other than coal and oil combusted in the affected facility, as determined by the fuel sampling and analysis procedures in Method 19 of appendix A of this part, ng/J (lb/MMBtu). The value $E_w$ for each fuel lot is used for each hourly average during the time that the lot is being combusted; and

$X_k$ = Fraction of total heat input from fuel combustion derived from coal, oil, or coal and oil, as determined by applicable procedures in Method 19 of appendix A of this part.

(ii) To compute the percent of potential $SO_2$ emission rate (%$P_s$), an adjusted %$R_g$ (%$R_g^o$) is computed from the adjusted $E_{ao}^o$ from paragraph (b)(3)(i) of this section and an adjusted average $SO_2$ inlet rate ($E_{ai}^o$) using the following formula:

$$\%R_g^o = 100\left(1.0 - \frac{E_{ao}^o}{E_{ai}^o}\right)$$

To compute $E_{ai}^o$, an adjusted hourly $SO_2$ inlet rate ($E_{hi}^o$) is used. The $E_{hi}^o$ is computed using the following formula:

$$E_{hi}^o = \frac{E_{hi} - E_w(1 - X_k)}{X_k}$$

Where:

$E_{hi}^o$ = Adjusted hourly $SO_2$ inlet rate, ng/J (lb/MMBtu); and

$E_{hi}$ = Hourly $SO_2$ inlet rate, ng/J (lb/MMBtu).

(4) The owner or operator of an affected facility subject to paragraph (b)(3) of this section does not have to measure parameters $E_w$ or $X_k$ if the owner or operator elects to assume that

$X_k$ = 1.0. Owners or operators of affected facilities who assume $X_k$ = 1.0 shall:

(i) Determine $\%P_s$ following the procedures in paragraph (c)(2) of this section; and

(ii) Sulfur dioxide emissions ($E_s$) are considered to be in compliance with $SO_2$ emission limits under § 60.42b.

(5) The owner or operator of an affected facility that qualifies under the provisions of § 60.42b(d) does not have to measure parameters $E_w$ or $X_k$ under paragraph (b)(3) of this section if the owner or operator of the affected facility elects to measure $SO_2$ emission rates of the coal or oil following the fuel sampling and analysis procedures under Method 19 of appendix A of this part.

(d) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility that combusts only very low sulfur oil, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for oil of 10 percent (0.10) or less shall:

(1) Conduct the initial performance test over 24 consecutive steam generating unit operating hours at full load;

(2) Determine compliance with the standards after the initial performance test based on the arithmetic average of the hourly emissions data during each steam generating unit operating day if a CEMS is used, or based on a daily average if Method 6B of appendix A of this part or fuel sampling and analysis procedures under Method 19 of appendix A of this part are used.

(e) The owner or operator of an affected facility subject to § 60.42b(d)(1) shall demonstrate the maximum design capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. This demonstration will be made during the initial performance test and a subsequent demonstration may be requested at any other time. If the 24-hour average firing rate for the affected facility is less than the maximum design capacity provided by the manufacturer of the affected facility, the 24-hour average firing rate shall be used to determine the capacity utilization rate for the affected facility, otherwise the maximum design capacity provided by the manufacturer is used.

(f) For the initial performance test required under § 60.8, compliance with the $SO_2$ emission limits and percent reduction requirements under § 60.42b is based on the average emission rates and the average percent reduction for $SO_2$ for the first 30 consecutive steam generating unit operating days, except as provided under paragraph (d) of this section. The initial performance test is the only test for which at least 30 days prior notice is required unless otherwise specified by the Administrator. The initial performance test is to be scheduled so that the first steam generating unit operating day of the 30 successive steam generating unit operating days is completed within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility. The boiler load during the 30-day period does not have to be the maximum design load, but must be representative of future operating conditions and include at least one 24-hour period at full load.

(g) After the initial performance test required under § 60.8, compliance with the $SO_2$ emission limits and percent reduction requirements under § 60.42b is based on the average emission rates and the average percent reduction for $SO_2$ for 30 successive steam generating unit operating days, except as provided under paragraph (d). A separate performance test is completed at the end of each steam generating unit operating day after the initial performance test, and a new 30-day average emission rate and percent reduction for $SO_2$ are calculated to show compliance with the standard.

(h) Except as provided under paragraph (i) of this section, the owner or operator of an affected facility shall use all valid $SO_2$ emissions data in calculating $\%P_s$ and $E_{ho}$ under paragraph (c), of this section whether or not the minimum emissions data requirements under § 60.46b are achieved. All valid emissions data, including valid $SO_2$ emission data collected during periods of startup, shutdown and malfunction, shall be used in calculating $\%P_s$ and $E_{ho}$ pursuant to paragraph (c) of this section.

(i) During periods of malfunction or maintenance of the $SO_2$ control systems when oil is combusted as provided under § 60.42b(i), emission data are not used to calculate $\%P_s$ or $E_s$ under § 60.42b(a), (b) or (c), however, the emissions data are used to determine compliance with the emission limit under § 60.42b(i).

(j) The owner or operator of an affected facility that combusts very low sulfur oil is not subject to the compliance and performance testing requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

(k) The owner or operator of an affected facility seeking to demonstrate compliance under §§ 60.42b(d)(4), 60.42b(j), and 60.42b(k)(2) shall follow the applicable procedures under § 60.49b(r).

**§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.**

(a) The PM emission standards and opacity limits under § 60.43b apply at all times except during periods of startup, shutdown, or malfunction. The $NO_X$ emission standards under § 60.44b apply at all times.

(b) Compliance with the PM emission standards under § 60.43b shall be determined through performance testing as described in paragraph (d) of this section, except as provided in paragraph (i) of this section.

(c) Compliance with the $NO_X$ emission standards under § 60.44b shall be determined through performance testing under paragraph (e) or (f), or under paragraphs (g) and (h) of this section, as applicable.

(d) To determine compliance with the PM emission limits and opacity limits under § 60.43b, the owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, using the following procedures and reference methods:

(1) Method 3B of appendix A of this part is used for gas analysis when applying Method 5 or 17 of appendix A of this part.

(2) Method 5, 5B, or 17 of appendix A of this part shall be used to measure the concentration of PM as follows:

(i) Method 5 of appendix A of this part shall be used at affected facilities without wet flue gas desulfurization (FGD) systems; and

(ii) Method 17 of appendix A of this part may be used at facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (32 °F). The procedures of sections 2.1 and 2.3 of Method 5B of appendix A of this part may be used in Method 17 of appendix A of this part only if it is used after a wet FGD system. Do not use Method 17 of appendix A of this part after wet FGD systems if the effluent is saturated or laden with water droplets.

(iii) Method 5B of appendix A of this part is to be used only after wet FGD systems.

(3) Method 1 of appendix A of this part is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling

times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(4) For Method 5 of appendix A of this part, the temperature of the sample gas in the probe and filter holder is monitored and is maintained at 160±14 °C (320±25 °F).

(5) For determination of PM emissions, the oxygen ($O_2$) or $CO_2$ sample is obtained simultaneously with each run of Method 5, 5B, or 17 of appendix A of this part by traversing the duct at the same sampling location.

(6) For each run using Method 5, 5B, or 17 of appendix A of this part, the emission rate expressed in ng/J heat input is determined using:

(i) The $O_2$ or $CO_2$ measurements and PM measurements obtained under this section;

(ii) The dry basis F factor; and

(iii) The dry basis emission rate calculation procedure contained in Method 19 of appendix A of this part.

(7) Method 9 of appendix A of this part is used for determining the opacity of stack emissions.

(e) To determine compliance with the emission limits for $NO_X$ required under § 60.44b, the owner or operator of an affected facility shall conduct the performance test as required under § 60.8 using the continuous system for monitoring $NO_X$ under § 60.48(b).

(1) For the initial compliance test, $NO_X$ from the steam generating unit are monitored for 30 successive steam generating unit operating days and the 30-day average emission rate is used to determine compliance with the $NO_X$ emission standards under § 60.44b. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility which combusts coal or which combusts residual oil having a nitrogen content greater than 0.30 weight percent shall determine compliance with the $NO_X$ emission standards under § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly $NO_X$ emission data for the preceding 30 steam generating unit operating days.

(3) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that has a heat input capacity greater than 73 MW (250 MMBtu/hr) and that combusts natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall determine compliance with the $NO_X$ standards under § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly $NO_X$ emission data for the preceding 30 steam generating unit operating days.

(4) Following the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less and that combusts natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall upon request determine compliance with the $NO_X$ standards under § 60.44b through the use of a 30-day performance test. During periods when performance tests are not requested, $NO_X$ emissions data collected pursuant to § 60.48b(g)(1) or § 60.48b(g)(2) are used to calculate a 30-day rolling average emission rate on a daily basis and used to prepare excess emission reports, but will not be used to determine compliance with the $NO_X$ emission standards. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly $NO_X$ emission data for the preceding 30 steam generating unit operating days.

(5) If the owner or operator of an affected facility that combusts residual oil does not sample and analyze the residual oil for nitrogen content, as specified in § 60.49b(e), the requirements of § 60.48b(g)(1) apply and the provisions of § 60.48b(g)(2) are inapplicable.

(f) To determine compliance with the emissions limits for $NO_X$ required by § 60.44b(a)(4) or § 60.44b(l) for duct burners used in combined cycle systems, either of the procedures described in paragraph (f)(1) or (2) of this section may be used:

(1) The owner or operator of an affected facility shall conduct the performance test required under § 60.8 as follows:

(i) The emissions rate (E) of $NO_X$ shall be computed using Equation 1 in this section:

$$E = E_{sg} + \left(\frac{H_g}{H_b}\right)\left(E_{sg} - E_g\right) \qquad \text{(Eq.1)}$$

Where:

E = Emissions rate of $NO_X$ from the duct burner, ng/J (lb/MMBtu) heat input;

$E_{sg}$ = Combined effluent emissions rate, in ng/J (lb/MMBtu) heat input using appropriate F factor as described in Method 19 of appendix A of this part;

$H_g$ = Heat input rate to the combustion turbine, in J/hr (MMBtu/hr);

$H_b$ = Heat input rate to the duct burner, in J/hr (MMBtu/hr); and

$E_g$ = Emissions rate from the combustion turbine, in ng/J (lb/MMBtu) heat input calculated using appropriate F factor as described in Method 19 of appendix A of this part.

(ii) Method 7E of appendix A of this part shall be used to determine the $NO_X$ concentrations. Method 3A or 3B of appendix A of this part shall be used to determine $O_2$ concentration.

(iii) The owner or operator shall identify and demonstrate to the Administrator's satisfaction suitable methods to determine the average hourly heat input rate to the combustion turbine and the average hourly heat input rate to the affected duct burner.

(iv) Compliance with the emissions limits under § 60.44b(a)(4) or § 60.44b(l) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests; or

(2) The owner or operator of an affected facility may elect to determine compliance on a 30-day rolling average basis by using the CEMS specified under § 60.48b for measuring $NO_X$ and $O_2$ and meet the requirements of § 60.48b. The sampling site shall be located at the outlet from the steam generating unit. The $NO_X$ emissions rate at the outlet from the steam generating unit shall constitute the $NO_X$ emissions rate from the duct burner of the combined cycle system.

(g) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall demonstrate the maximum heat input capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. The owner or operator of an affected facility shall determine the maximum heat input capacity using the heat loss method described in sections 5 and 7.3 of the ASME *Power Test Codes* 4.1 (incorporated by reference, see § 60.17). This demonstration of maximum heat input capacity shall be made during the initial performance test for affected facilities that meet the criteria of § 60.44b(j). It shall be made within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not

later than 180 days after initial start-up of each facility, for affected facilities meeting the criteria of § 60.44b(k). Subsequent demonstrations may be required by the Administrator at any other time. If this demonstration indicates that the maximum heat input capacity of the affected facility is less than that stated by the manufacturer of the affected facility, the maximum heat input capacity determined during this demonstration shall be used to determine the capacity utilization rate for the affected facility. Otherwise, the maximum heat input capacity provided by the manufacturer is used.

(h) The owner or operator of an affected facility described in § 60.44b(j) that has a heat input capacity greater than 73 MW (250 MMBtu/hr) shall:

(1) Conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the $NO_X$ emission standards under § 60.44b using Method 7, 7A, 7E of appendix A of this part, or other approved reference methods; and

(2) Conduct subsequent performance tests once per calendar year or every 400 hours of operation (whichever comes first) to demonstrate compliance with the $NO_X$ emission standards under § 60.44b over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, 7E of appendix A of this part, or other approved reference methods.

(i) The owner or operator of an affected facility seeking to demonstrate compliance under paragraph § 60.43b(h)(5) shall follow the applicable procedures under § 60.49b(r).

(j) In place of PM testing with EPA Reference Method 5, 5B, or 17 of appendix A of this part, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring PM emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor PM emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 of appendix A of this part shall comply with the requirements specified in paragraphs (j)(1) through (j)(13) of this section.

(1) Notify the Administrator one month before starting use of the system.

(2) Notify the Administrator one month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of the CEMS if the owner or operator was previously determining compliance by Method 5, 5B, or 17 of appendix A of this part performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for PM emissions as required under § 60.8 of subpart A of this part. Compliance with the PM emission limit shall be determined by using the CEMS specified in paragraph (j) of this section to measure PM and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19 of appendix A of this part, section 4.1.

(6) Compliance with the PM emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using CEMS outlet data.

(7) At a minimum, valid CEMS hourly averages shall be obtained as specified in paragraphs (j)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(8) The 1-hour arithmetic averages required under paragraph (j)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (j)(7) of this section are not met.

(10) The CEMS shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the CEMS required by Performance Specification 11 in appendix B of this part, PM and $O_2$ (or $CO_2$) data shall be collected concurrently (or within a 30-to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (j)(7)(i) of this section.

(i) For PM, EPA Reference Method 5, 5B, or 17 of appendix A of this part shall be used.

(ii) For $O_2$ (or $CO_2$), EPA reference Method 3, 3A, or 3B of appendix A of this part, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 of appendix A of this part to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours per 30-day rolling average.

**§ 60.47b Emission monitoring for sulfur dioxide.**

(a) Except as provided in paragraphs (b), (f), and (h) of this section, the owner or operator of an affected facility subject to the $SO_2$ standards under § 60.42b shall install, calibrate, maintain, and operate CEMS for measuring $SO_2$ concentrations and either $O_2$ or $CO_2$ concentrations and shall record the output of the systems. For units complying with the percent reduction standard, the $SO_2$ and either $O_2$ or $CO_2$ concentrations shall both be monitored at the inlet and outlet of the $SO_2$ control device. If the owner or operator has installed and certified $SO_2$ and $O_2$ or $CO_2$ CEMS according to the requirements of § 75.20(c)(1) of this chapter and appendix A to part 75 of this chapter, and is continuing to meet the ongoing quality assurance requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter, those CEMS may be used to meet the requirements of this section, provided that:

(1) When relative accuracy testing is conducted, $SO_2$ concentration data and $CO_2$ (or $O_2$) data are collected simultaneously; and

(2) In addition to meeting the applicable $SO_2$ and $CO_2$ (or $O_2$) relative accuracy specifications in Figure 2 of appendix B to part 75 of this chapter, the relative accuracy (RA) standard in section 13.2 of Performance Specification 2 in appendix B to this part is met when the RA is calculated on a lb/MMBtu basis; and

(3) The reporting requirements of § 60.49b are met. $SO_2$ and $CO_2$ (or $O_2$)

data used to meet the requirements of § 60.49b shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the $SO_2$ data have been bias adjusted according to the procedures of part 75 of this chapter.

(b) As an alternative to operating CEMS as required under paragraph (a) of this section, an owner or operator may elect to determine the average $SO_2$ emissions and percent reduction by:

(1) Collecting coal or oil samples in an as-fired condition at the inlet to the steam generating unit and analyzing them for sulfur and heat content according to Method 19 of appendix A of this part. Method 19 of appendix A of this part provides procedures for converting these measurements into the format to be used in calculating the average $SO_2$ input rate, or

(2) Measuring $SO_2$ according to Method 6B of appendix A of this part at the inlet or outlet to the $SO_2$ control system. An initial stratification test is required to verify the adequacy of the Method 6B of appendix A of this part sampling location. The stratification test shall consist of three paired runs of a suitable $SO_2$ and $CO_2$ measurement train operated at the candidate location and a second similar train operated according to the procedures in section 3.2 and the applicable procedures in section 7 of Performance Specification 2. Method 6B of appendix A of this part, Method 6A of appendix A of this part, or a combination of Methods 6 and 3 or 3B of appendix A of this part or Methods 6C and 3A of appendix A of this part are suitable measurement techniques. If Method 6B of appendix A of this part is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B of appendix A of this part 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent.

(3) A daily $SO_2$ emission rate, $E_D$, shall be determined using the procedure described in Method 6A of appendix A of this part, section 7.6.2 (Equation 6A–8) and stated in ng/J (lb/MMBtu) heat input.

(4) The mean 30-day emission rate is calculated using the daily measured values in ng/J (lb/MMBtu) for 30 successive steam generating unit operating days using equation 19–20 of Method 19 of appendix A of this part.

(c) The owner or operator of an affected facility shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator or the reference methods and procedures as described in paragraph (b) of this section.

(d) The 1-hour average $SO_2$ emission rates measured by the CEMS required by paragraph (a) of this section and required under § 60.13(h) is expressed in ng/J or lb/MMBtu heat input and is used to calculate the average emission rates under § 60.42(b). Each 1-hour average $SO_2$ emission rate must be based on 30 or more minutes of steam generating unit operation. The hourly averages shall be calculated according to § 60.13(h)(2). Hourly $SO_2$ emission rates are not calculated if the affected facility is operated less than 30 minutes in a given clock hour and are not counted toward determination of a steam generating unit operating day.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) Except as provided for in paragraph (e)(4) of this section, all CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 of appendix B of this part.

(2) Except as provided for in paragraph (e)(4) of this section, quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 of appendix F of this part.

(3) For affected facilities combusting coal or oil, alone or in combination with other fuels, the span value of the $SO_2$ CEMS at the inlet to the $SO_2$ control device is 125 percent of the maximum estimated hourly potential $SO_2$ emissions of the fuel combusted, and the span value of the CEMS at the outlet to the $SO_2$ control device is 50 percent of the maximum estimated hourly potential $SO_2$ emissions of the fuel combusted. Alternatively, $SO_2$ span values determined according to section 2.1.1 in appendix A to part 75 of this chapter may be used.

(4) As an alternative to meeting the requirements of requirements of paragraphs (e)(1) and (e)(2) of this section, the owner or operator may elect to implement the following alternative data accuracy assessment procedures:

(i) For all required $CO_2$ and $O_2$ monitors and for $SO_2$ and $NO_X$ monitors with span values less than 100 ppm, the daily calibration error test and calibration adjustment procedures described in sections 2.1.1 and 2.1.3 of appendix B to part 75 of this chapter may be followed instead of the CD assessment procedures in Procedure 1, section 4.1 of appendix F to this part. If this option is selected, the data validation and out-of-control provisions in sections 2.1.4 and 2.1.5 of appendix B to part 75 of this chapter shall be followed instead of the excessive CD and out-of-control criteria in Procedure 1, section 4.3 of appendix F to this part. For the purposes of data validation under this subpart, the excessive CD and out-of-control criteria in Procedure 1, section 4.3 of appendix F to this part shall apply to $SO_2$ and $NO_X$ span values less than 100 ppm;

(ii) For all required $CO_2$ and $O_2$ monitors and for $SO_2$ and $NO_X$ monitors with span values greater than 30 ppm, quarterly linearity checks may be performed in accordance with section 2.2.1 of appendix B to part 75 of this chapter, instead of performing the cylinder gas audits (CGAs) described in Procedure 1, section 5.1.2 of appendix F to this part. If this option is selected: The frequency of the linearity checks shall be as specified in section 2.2.1 of appendix B to part 75 of this chapter; the applicable linearity specifications in section 3.2 of appendix A to part 75 of this chapter shall be met; the data validation and out-of-control criteria in section 2.2.3 of appendix B to part 75 of this chapter shall be followed instead of the excessive audit inaccuracy and out-of-control criteria in Procedure 1, section 5.2 of appendix F to this part; and the grace period provisions in section 2.2.4 of appendix B to part 75 of this chapter shall apply. For the purposes of data validation under this subpart, the cylinder gas audits described in Procedure 1, section 5.1.2 of appendix F to this part shall be performed for $SO_2$ and $NO_X$ span values less than or equal to 30 ppm; and

(iii) For $SO_2$, $CO_2$, and $O_2$ monitoring systems and for $NO_X$ emission rate monitoring systems, RATAs may be performed in accordance with section 2.3 of appendix B to part 75 of this chapter instead of following the procedures described in Procedure 1, section 5.1.1 of appendix F to this part. If this option is selected: The frequency of each RATA shall be as specified in section 2.3.1 of appendix B to part 75 of this chapter; the applicable relative accuracy specifications shown in Figure 2 in appendix B to part 75 of this chapter shall be met; the data validation and out-of-control criteria in section 2.3.2 of appendix B to part 75 of this chapter shall be followed instead of the excessive audit inaccuracy and out-of-control criteria in Procedure 1, section

5.2 of appendix F to this part; and the grace period provisions in section 2.3.3 of appendix B to part 75 of this chapter shall apply. For the purposes of data validation under this subpart, the relative accuracy specification in section 13.2 of Performance Specification 2 in appendix B to this part shall be met on a lb/MMBtu basis for $SO_2$ (regardless of the $SO_2$ emission level during the RATA), and for $NO_X$ when the average $NO_X$ emission rate measured by the reference method during the RATA is less than 0.100 lb/MMBtu.

(f) The owner or operator of an affected facility that combusts very low sulfur oil or is demonstrating compliance under § 60.45b(k) is not subject to the emission monitoring requirements under paragraph (a) of this section if the owner or operator maintains fuel records as described in § 60.49b(r).

**§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.**

(a) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of emissions discharged to the atmosphere and record the output of the system.

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a $NO_X$ standard under § 60.44b shall comply with either paragraphs (b)(1) or (b)(2) of this section.

(1) Install, calibrate, maintain, and operate CEMS for measuring $NO_X$ and $O_2$ (or $CO_2$) emissions discharged to the atmosphere, and shall record the output of the system; or

(2) If the owner or operator has installed a $NO_X$ emission rate CEMS to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.49b. Data reported to meet the requirements of § 60.49b shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(c) The CEMS required under paragraph (b) of this section shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

(d) The 1-hour average $NO_X$ emission rates measured by the continuous $NO_X$ monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the average emission rates under § 60.44b. The 1-hour averages shall be calculated using the data points required under § 60.13(h)(2).

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(1) For affected facilities combusting coal, wood or municipal-type solid waste, the span value for a continuous monitoring system for measuring opacity shall be between 60 and 80 percent.

(2) For affected facilities combusting coal, oil, or natural gas, the span value for $NO_X$ is determined using one of the following procedures:

(i) Except as provided under paragraph (e)(2)(ii) of this section, $NO_X$ span values shall be determined as follows:

| Fuel | Span values for $NO_X$ (ppm) |
|---|---|
| Natural gas | 500. |
| Oil | 500. |
| Coal | 1,000. |
| Mixtures | 500 (x + y) + 1,000z. |

Where:

x = Fraction of total heat input derived from natural gas;

y = Fraction of total heat input derived from oil; and

z = Fraction of total heat input derived from coal.

(ii) As an alternative to meeting the requirements of paragraph (e)(2)(i) of this section, the owner or operator of an affected facility may elect to use the $NO_X$ span values determined according to section 2.1.2 in appendix A to part 75 of this chapter.

(3) All span values computed under paragraph (e)(2)(i) of this section for combusting mixtures of regulated fuels are rounded to the nearest 500 ppm. Span values computed under paragraph (e)(2)(ii) of this section shall be rounded off according to section 2.1.2 in appendix A to part 75 of this chapter.

(f) When $NO_X$ emission data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using standby monitoring systems, Method 7 of appendix A of this part, Method 7A of appendix A of this part, or other approved reference methods to provide emission data for a minimum of 75 percent of the operating hours in each steam generating unit operating day, in at least 22 out of 30 successive steam generating unit operating days.

(g) The owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less, and that has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, or any mixture of these fuels, greater than 10 percent (0.10) shall:

(1) Comply with the provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section; or

(2) Monitor steam generating unit operating conditions and predict $NO_X$ emission rates as specified in a plan submitted pursuant to § 60.49b(c).

(h) The owner or operator of a duct burner, as described in § 60.41b, that is subject to the $NO_X$ standards of § 60.44b(a)(4) or § 60.44b(l) is not required to install or operate a continuous emissions monitoring system to measure $NO_X$ emissions.

(i) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) is not required to install or operate a CEMS for measuring $NO_X$ emissions.

(j) The owner or operator of an affected facility that meets the conditions in either paragraph (j)(1), (2), (3), (4), or (5) of this section is not required to install or operate a COMS for measuring opacity if:

(1) The affected facility uses a PM CEMS to monitor PM emissions; or

(2) The affected facility burns only liquid (excluding residual oil) or gaseous fuels with potential $SO_2$ emissions rates of 26 ng/J (0.060 lb/MMBtu) or less and does not use a post-combustion technology to reduce $SO_2$ or PM emissions. The owner or operator must maintain fuel records of the sulfur content of the fuels burned, as described under § 60.49b(r); or

(3) The affected facility burns coke oven gas alone or in combination with fuels meeting the criteria in paragraph (j)(2) of this section and does not use a post-combustion technology to reduce $SO_2$ or PM emissions; or

(4) The affected facility does not use post-combustion technology (except a wet scrubber) for reducing PM, $SO_2$, or carbon monoxide (CO) emissions, burns only gaseous fuels or fuel oils that contain less than or equal to 0.30 weight percent sulfur, and is operated such that emissions of CO to the atmosphere from the affected facility are maintained at levels less than or equal to 0.15 lb/MMBtu on a steam generating unit operating day average basis. Owners and

operators of affected facilities electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (j)(4)(i) through (iv) of this section.

(i) You must monitor CO emissions using a CEMS according to the procedures specified in paragraphs (j)(4)(i)(A) through (D) of this section.

(A) The CO CEMS must be installed, certified, maintained, and operated according to the provisions in § 60.58b(i)(3) of subpart Eb of this part.

(B) Each 1-hour CO emissions average is calculated using the data points generated by the CO CEMS expressed in parts per million by volume corrected to 3 percent oxygen (dry basis).

(C) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. At least two data points per hour must be used to calculate each 1-hour average.

(D) Quarterly accuracy determinations and daily calibration drift tests for the CO CEMS must be performed in accordance with procedure 1 in appendix F of this part.

(ii) You must calculate the 1-hour average CO emissions levels for each steam generating unit operating day by multiplying the average hourly CO output concentration measured by the CO CEMS times the corresponding average hourly flue gas flow rate and divided by the corresponding average hourly heat input to the affected source. The 24-hour average CO emission level is determined by calculating the arithmetic average of the hourly CO emission levels computed for each steam generating unit operating day.

(iii) You must evaluate the preceding 24-hour average CO emission level each steam generating unit operating day excluding periods of affected source startup, shutdown, or malfunction. If the 24-hour average CO emission level is greater than 0.15 lb/MMBtu, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high emission incident and, take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the 24-hour average CO emission level to 0.15 lb/MMBtu or less.

(iv) You must record the CO measurements and calculations performed according to paragraph (j)(4) of this section and any corrective actions taken. The record of corrective action taken must include the date and time during which the 24-hour average CO emission level was greater than 0.15 lb/MMBtu, and the date, time, and description of the corrective action.

(5) The affected facility burns only gaseous fuels or fuel oils that contain less than or equal to 0.30 weight percent sulfur and operates according to a written site-specific monitoring plan approved by the appropriate delegated permitting authority. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for the affected facility indicative of compliance with the opacity standard.

(k) Owners or operators complying with the PM emission limit by using a PM CEMS monitor instead of monitoring opacity must calibrate, maintain, and operate a CEMS, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.46b(j). The CEMS specified in paragraph § 60.46b(j) shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

**§ 60.49b Reporting and recordkeeping requirements.**

(a) The owner or operator of each affected facility shall submit notification of the date of initial startup, as provided by § 60.7. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of the fuels to be combusted in the affected facility;

(2) If applicable, a copy of any federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under §§ 60.42b(d)(1), 60.43b(a)(2), (a)(3)(iii), (c)(2)(ii), (d)(2)(iii), 60.44b(c), (d), (e), (i), (j), (k), 60.45b(d), (g), 60.46b(h), or 60.48b(i);

(3) The annual capacity factor at which the owner or operator anticipates operating the facility based on all fuels fired and based on each individual fuel fired; and

(4) Notification that an emerging technology will be used for controlling emissions of $SO_2$. The Administrator will examine the description of the emerging technology and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42b(a) unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the $SO_2$, PM, and/or $NO_X$ emission limits under §§ 60.42b, 60.43b, and 60.44b shall submit to the Administrator the performance test data from the initial performance test and the performance evaluation of the CEMS using the applicable performance specifications in appendix B of this part. The owner or operator of each affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator the maximum heat input capacity data from the demonstration of the maximum heat input capacity of the affected facility.

(c) The owner or operator of each affected facility subject to the $NO_X$ standard of § 60.44b who seeks to demonstrate compliance with those standards through the monitoring of steam generating unit operating conditions under the provisions of § 60.48b(g)(2) shall submit to the Administrator for approval a plan that identifies the operating conditions to be monitored under § 60.48b(g)(2) and the records to be maintained under § 60.49b(j). This plan shall be submitted to the Administrator for approval within 360 days of the initial startup of the affected facility. If the plan is approved, the owner or operator shall maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan. The plan shall:

(1) Identify the specific operating conditions to be monitored and the relationship between these operating conditions and $NO_X$ emission rates (*i.e.*, ng/J or lbs/MMBtu heat input). Steam generating unit operating conditions include, but are not limited to, the degree of staged combustion (*i.e.*, the ratio of primary air to secondary and/or tertiary air) and the level of excess air (*i.e.*, flue gas $O_2$ level);

(2) Include the data and information that the owner or operator used to identify the relationship between $NO_X$ emission rates and these operating conditions; and

(3) Identify how these operating conditions, including steam generating unit load, will be monitored under § 60.48b(g) on an hourly basis by the owner or operator during the period of operation of the affected facility; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating conditions will be representative and accurate; and the type and format of the records of these operating conditions, including steam generating unit load, that will be

maintained by the owner or operator under § 60.49b(j).

(d) The owner or operator of an affected facility shall record and maintain records of the amounts of each fuel combusted during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for the reporting period. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of each calendar month.

(e) For an affected facility that combusts residual oil and meets the criteria under §§ 60.46b(e)(4), 60.44b(j), or (k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content for the reporting period. The nitrogen content shall be determined using ASTM Method D4629 (incorporated by reference, see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

(f) For facilities subject to the opacity standard under § 60.43b, the owner or operator shall maintain records of opacity.

(g) Except as provided under paragraph (p) of this section, the owner or operator of an affected facility subject to the $NO_X$ standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date;

(2) The average hourly $NO_X$ emission rates (expressed as $NO_2$) (ng/J or lb/MMBtu heat input) measured or predicted;

(3) The 30-day average $NO_X$ emission rates (ng/J or lb/MMBtu heat input) calculated at the end of each steam generating unit operating day from the measured or predicted hourly nitrogen oxide emission rates for the preceding 30 steam generating unit operating days;

(4) Identification of the steam generating unit operating days when the calculated 30-day average $NO_X$ emission rates are in excess of the $NO_X$ emissions standards under § 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken;

(5) Identification of the steam generating unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(6) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data;

(7) Identification of ''F'' factor used for calculations, method of determination, and type of fuel combusted;

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(9) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3; and

(10) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

(h) The owner or operator of any affected facility in any category listed in paragraphs (h)(1) or (2) of this section is required to submit excess emission reports for any excess emissions that occurred during the reporting period.

(1) Any affected facility subject to the opacity standards under § 60.43b(e) or to the operating parameter monitoring requirements under § 60.13(i)(1).

(2) Any affected facility that is subject to the $NO_X$ standard of § 60.44b, and that:

(i) Combusts natural gas, distillate oil, or residual oil with a nitrogen content of 0.3 weight percent or less; or

(ii) Has a heat input capacity of 73 MW (250 MMBtu/hr) or less and is required to monitor $NO_X$ emissions on a continuous basis under § 60.48b(g)(1) or steam generating unit operating conditions under § 60.48b(g)(2).

(3) For the purpose of § 60.43b, excess emissions are defined as all 6-minute periods during which the average opacity exceeds the opacity standards under § 60.43b(f).

(4) For purposes of § 60.48b(g)(1), excess emissions are defined as any calculated 30-day rolling average $NO_X$ emission rate, as determined under § 60.46b(e), that exceeds the applicable emission limits in § 60.44b.

(i) The owner or operator of any affected facility subject to the continuous monitoring requirements for $NO_X$ under § 60.48(b) shall submit reports containing the information recorded under paragraph (g) of this section.

(j) The owner or operator of any affected facility subject to the $SO_2$ standards under § 60.42b shall submit reports.

(k) For each affected facility subject to the compliance and performance testing requirements of § 60.45b and the reporting requirement in paragraph (j) of this section, the following information shall be reported to the Administrator:

(1) Calendar dates covered in the reporting period;

(2) Each 30-day average $SO_2$ emission rate (ng/J or lb/MMBtu heat input) measured during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken;

(3) Each 30-day average percent reduction in $SO_2$ emissions calculated during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken;

(4) Identification of the steam generating unit operating days that coal or oil was combusted and for which $SO_2$ or diluent ($O_2$ or $CO_2$) data have not been obtained by an approved method for at least 75 percent of the operating hours in the steam generating unit operating day; justification for not obtaining sufficient data; and description of corrective action taken;

(5) Identification of the times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective action taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit;

(6) Identification of ''F'' factor used for calculations, method of determination, and type of fuel combusted;

(7) Identification of times when hourly averages have been obtained based on manual sampling methods;

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(9) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3;

(10) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part; and

(11) The annual capacity factor of each fired as provided under paragraph (d) of this section.

(l) For each affected facility subject to the compliance and performance testing requirements of § 60.45b(d) and the reporting requirements of paragraph (j) of this section, the following information shall be reported to the Administrator:

(1) Calendar dates when the facility was in operation during the reporting period;

(2) The 24-hour average $SO_2$ emission rate measured for each steam generating unit operating day during the reporting

period that coal or oil was combusted, ending in the last 24-hour period in the quarter; reasons for noncompliance with the emission standards; and a description of corrective actions taken;

(3) Identification of the steam generating unit operating days that coal or oil was combusted for which $S0_2$ or diluent ($O_2$ or $CO_2$) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and description of corrective action taken;

(4) Identification of the times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective action taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit;

(5) Identification of ''F'' factor used for calculations, method of determination, and type of fuel combusted;

(6) Identification of times when hourly averages have been obtained based on manual sampling methods;

(7) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(8) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3; and

(9) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of appendix F 1 of this part. If the owner or operator elects to implement the alternative data assessment procedures described in §§ 60.47b(e)(4)(i) through (e)(4)(iii), each data assessment report shall include a summary of the results of all of the RATAs, linearity checks, CGAs, and calibration error or drift assessments required by §§ 60.47b(e)(4)(i) through (e)(4)(iii).

(m) For each affected facility subject to the $SO_2$ standards under § 60.42(b) for which the minimum amount of data required under § 60.47b(f) were not obtained during the reporting period, the following information is reported to the Administrator in addition to that required under paragraph (k) of this section:

(1) The number of hourly averages available for outlet emission rates and inlet emission rates;

(2) The standard deviation of hourly averages for outlet emission rates and inlet emission rates, as determined in Method 19 of appendix A of this part, section 7;

(3) The lower confidence limit for the mean outlet emission rate and the upper confidence limit for the mean inlet emission rate, as calculated in Method 19 of appendix A of this part, section 7; and

(4) The ratio of the lower confidence limit for the mean outlet emission rate and the allowable emission rate, as determined in Method 19 of appendix A of this part, section 7.

(n) If a percent removal efficiency by fuel pretreatment (*i.e.*, $\%R_f$) is used to determine the overall percent reduction (*i.e.*, $\%R_o$) under § 60.45b, the owner or operator of the affected facility shall submit a signed statement with the report.

(1) Indicating what removal efficiency by fuel pretreatment (*i.e.*, $\%R_f$) was credited during the reporting period;

(2) Listing the quantity, heat content, and date each pre-treated fuel shipment was received during the reporting period, the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the reporting period;

(3) Documenting the transport of the fuel from the fuel pretreatment facility to the steam generating unit; and

(4) Including a signed statement from the owner or operator of the fuel pretreatment facility certifying that the percent removal efficiency achieved by fuel pretreatment was determined in accordance with the provisions of Method 19 of appendix A of this part and listing the heat content and sulfur content of each fuel before and after fuel pretreatment.

(o) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

(p) The owner or operator of an affected facility described in § 60.44b(j) or (k) shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date;

(2) The number of hours of operation; and

(3) A record of the hourly steam load.

(q) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator a report containing:

(1) The annual capacity factor over the previous 12 months;

(2) The average fuel nitrogen content during the reporting period, if residual oil was fired; and

(3) If the affected facility meets the criteria described in § 60.44b(j), the results of any $NO_X$ emission tests required during the reporting period, the hours of operation during the reporting period, and the hours of operation since the last $NO_X$ emission test.

(r) The owner or operator of an affected facility who elects to use the fuel based compliance alternatives in § 60.42b or § 60.43b shall either:

(1) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) or § 60.42b(k)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier that certify that the oil meets the definition of distillate oil as defined in § 60.41b and the applicable sulfur limit. For the purposes of this section, the distillate oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition and/or pipeline quality natural gas was combusted in the affected facility during the reporting period; or

(2) The owner or operator of an affected facility who elects to demonstrate compliance based on fuel analysis in § 60.42b or § 60.43b shall develop and submit a site-specific fuel analysis plan to the Administrator for review and approval no later than 60 days before the date you intend to demonstrate compliance. Each fuel analysis plan shall include a minimum initial requirement of weekly testing and each analysis report shall contain, at a minimum, the following information:

(i) The potential sulfur emissions rate of the representative fuel mixture in ng/J heat input;

(ii) The method used to determine the potential sulfur emissions rate of each constituent of the mixture. For distillate oil and natural gas a fuel receipt or tariff sheet is acceptable;

(iii) The ratio of different fuels in the mixture; and

(iv) The owner or operator can petition the Administrator to approve monthly or quarterly sampling in place of weekly sampling.

(s) Facility specific $NO_X$ standard for Cytec Industries Fortier Plant's C.AOG incinerator located in Westwego, Louisiana:

(1) *Definitions*.

*Oxidation zone* is defined as the portion of the C.AOG incinerator that extends from the inlet of the oxidizing zone combustion air to the outlet gas stack.

*Reducing zone* is defined as the portion of the C.AOG incinerator that extends from the burner section to the inlet of the oxidizing zone combustion air.

*Total inlet air* is defined as the total amount of air introduced into the C.AOG incinerator for combustion of natural gas and chemical by-product waste and is equal to the sum of the air flow into the reducing zone and the air flow into the oxidation zone.

(2) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When natural gas and chemical by-product waste are simultaneously combusted, the $NO_X$ emission limit is 289 ng/J (0.67 lb/MMBtu) and a maximum of 81 percent of the total inlet air provided for combustion shall be provided to the reducing zone of the C.AOG incinerator.

(3) *Emission monitoring.* (i) The percent of total inlet air provided to the reducing zone shall be determined at least every 15 minutes by measuring the air flow of all the air entering the reducing zone and the air flow of all the air entering the oxidation zone, and compliance with the percentage of total inlet air that is provided to the reducing zone shall be determined on a 3-hour average basis.

(ii) The $NO_X$ emission limit shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b(i).

(iii) The monitoring of the $NO_X$ emission limit shall be performed in accordance with § 60.48b.

(4) *Reporting and recordkeeping requirements.* (i) The owner or operator of the C.AOG incinerator shall submit a report on any excursions from the limits required by paragraph (a)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the C.AOG incinerator shall keep records of the monitoring required by paragraph (a)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of the C.AOG incinerator shall perform all the applicable reporting and recordkeeping requirements of this section.

(t) Facility-specific $NO_X$ standard for Rohm and Haas Kentucky Incorporated's Boiler No. 100 located in Louisville, Kentucky:

(1) *Definitions.*

*Air ratio control damper* is defined as the part of the low $NO_X$ burner that is adjusted to control the split of total combustion air delivered to the reducing and oxidation portions of the combustion flame.

*Flue gas recirculation line* is defined as the part of Boiler No. 100 that recirculates a portion of the boiler flue gas back into the combustion air.

(2) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously combusted, the $NO_X$ emission limit is 473 ng/J (1.1 lb/MMBtu), and the air ratio control damper tee handle shall be at a minimum of 5 inches (12.7 centimeters) out of the boiler, and the flue gas recirculation line shall be operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

(3) *Emission monitoring for nitrogen oxides.* (i) The air ratio control damper tee handle setting and the flue gas recirculation line valve opening position indicator setting shall be recorded during each 8-hour operating shift.

(ii) The $NO_X$ emission limit shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b.

(iii) The monitoring of the $NO_X$ emission limit shall be performed in accordance with § 60.48b.

(4) *Reporting and recordkeeping requirements.* (i) The owner or operator of Boiler No. 100 shall submit a report on any excursions from the limits required by paragraph (b)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of Boiler No. 100 shall keep records of the monitoring required by paragraph (b)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of Boiler No. 100 shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

(u) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.* (1) This paragraph (u) applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia (''site'') and only to the natural gas-fired boilers installed as part of the powerhouse conversion required pursuant to 40 CFR 52.2454(g). The requirements of this paragraph shall apply, and the requirements of §§ 60.40b through 60.49b(t) shall not apply, to the natural gas-fired boilers installed pursuant to 40 CFR 52.2454(g).

(i) The site shall equip the natural gas-fired boilers with low $NO_X$ technology.

(ii) The site shall install, calibrate, maintain, and operate a continuous monitoring and recording system for measuring $NO_X$ emissions discharged to the atmosphere and opacity using a continuous emissions monitoring system or a predictive emissions monitoring system.

(iii) Within 180 days of the completion of the powerhouse conversion, as required by 40 CFR 52.2454, the site shall perform a performance test to quantify criteria pollutant emissions.

(2) [Reserved]

(v) The owner or operator of an affected facility may submit electronic quarterly reports for $SO_2$ and/or $NO_X$ and/or opacity in lieu of submitting the written reports required under paragraphs (h), (i), (j), (k) or (l) of this section. The format of each quarterly electronic report shall be coordinated with the permitting authority. The electronic report(s) shall be submitted no later than 30 days after the end of the calendar quarter and shall be accompanied by a certification statement from the owner or operator, indicating whether compliance with the applicable emission standards and minimum data requirements of this subpart was achieved during the reporting period. Before submitting reports in the electronic format, the owner or operator shall coordinate with the permitting authority to obtain their agreement to submit reports in this alternative format.

(w) The reporting period for the reports required under this subpart is each 6 month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

(x) Facility-specific $NO_X$ standard for Weyerhaeuser Company's No. 2 Power Boiler located in New Bern, North Carolina:

(1) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously combusted, the $NO_X$ emission limit is 215 ng/J (0.5 lb/MMBtu).

(2) *Emission monitoring for nitrogen oxides.* (i) The $NO_X$ emissions shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b.

(ii) The monitoring of the $NO_X$ emissions shall be performed in accordance with § 60.48b.

(3) *Reporting and recordkeeping requirements.* (i) The owner or operator of the No. 2 Power Boiler shall submit a report on any excursions from the limits required by paragraph (x)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of the No. 2 Power Boiler shall keep records of the monitoring required by paragraph (x)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the No. 2 Power Boiler shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

(y) Facility-specific $NO_X$ standard for INEOS USA's AOGI located in Lima, Ohio:

(1) *Standard for $NO_X$*. (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical byproduct/waste are simultaneously combusted, the $NO_X$ emission limit is 645 ng/J (1.5 lb/MMBtu).

(2) *Emission monitoring for $NO_X$*. (i) The $NO_X$ emissions shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b.

(ii) The monitoring of the $NO_X$ emissions shall be performed in accordance with § 60.48b.

(3) *Reporting and recordkeeping requirements*. (i) The owner or operator of the AOGI shall submit a report on any excursions from the limits required by paragraph (y)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the AOGI shall keep records of the monitoring required by paragraph (y)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the AOGI shall perform all the applicable reporting and recordkeeping requirements of this section.

## Subpart Dc—[Amended]

■ 6. Subpart Dc is revised to read as follows:

### Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

Sec.

60.40c Applicability and delegation of authority.
60.41c Definitions.
60.42c Standard for sulfur dioxide ($SO_2$).
60.43c Standard for particulate matter (PM).
60.44c Compliance and performance test methods and procedures for sulfur dioxide.
60.45c Compliance and performance test methods and procedures for particulate matter.
60.46c Emission monitoring for sulfur dioxide.
60.47c Emission monitoring for particulate matter.
60.48c Reporting and recordkeeping requirements.

### Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

#### § 60.40c Applicability and delegation of authority.

(a) Except as provided in paragraph (d) of this section, the affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)) or less, but greater than or equal to 2.9 MW (10 MMBtu/hr).

(b) In delegating implementation and enforcement authority to a State under section 111(c) of the Clean Air Act, § 60.48c(a)(4) shall be retained by the Administrator and not transferred to a State.

(c) Steam generating units that meet the applicability requirements in paragraph (a) of this section are not subject to the sulfur dioxide ($SO_2$) or particulate matter (PM) emission limits, performance testing requirements, or monitoring requirements under this subpart (§§ 60.42c, 60.43c, 60.44c, 60.45c, 60.46c, or 60.47c) during periods of combustion research, as defined in § 60.41c.

(d) Any temporary change to an existing steam generating unit for the purpose of conducting combustion research is not considered a modification under § 60.14.

(e) Heat recovery steam generators that are associated with combined cycle gas turbines and meet the applicability requirements of subpart GG or KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than or equal to 2.9 MW (10 MMBtu/hr) heat input of fossil fuel but less than or equal to 29 MW (100 MMBtu/hr) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(f) Any facility covered by subpart AAAA of this part is not covered by this subpart.

(g) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart BBBB of this part is not covered by this subpart.

#### § 60.41c Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

*Annual capacity factor* means the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels derived from coal for the purposes of creating useful heat, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

*Coal refuse* means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

*Cogeneration steam generating unit* means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

*Combined cycle system* means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

*Combustion research* means the experimental firing of any fuel or combination of fuels in a steam generating unit for the purpose of conducting research and development of more efficient combustion or more effective prevention or control of air pollutant emissions from combustion, provided that, during these periods of research and development, the heat generated is not used for any purpose other than preheating combustion air for use by that steam generating unit (*i.e.*, the heat generated is released to the atmosphere without being used for space heating, process heating, driving pumps, preheating combustion air for

other units, generating electricity, or any other purpose).

*Conventional technology* means wet flue gas desulfurization technology, dry flue gas desulfurization technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

*Distillate oil* means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Dry flue gas desulfurization technology* means a $SO_2$ control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline reagent and water, whether introduced separately or as a premixed slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline reagents used in dry flue gas desulfurization systems include, but are not limited to, lime and sodium compounds.

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source (such as a stationary gas turbine, internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

*Emerging technology* means any $SO_2$ control system that is not defined as a conventional technology under this section, and for which the owner or operator of the affected facility has received approval from the Administrator to operate as an emerging technology under § 60.48c(a)(4).

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

*Fluidized bed combustion technology* means a device wherein fuel is distributed onto a bed (or series of beds) of limestone aggregate (or other sorbent materials) for combustion; and these materials are forced upward in the device by the flow of combustion air and the gaseous products of combustion. Fluidized bed combustion technology includes, but is not limited to, bubbling bed units and circulating bed units.

*Fuel pretreatment* means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

*Heat input* means heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and kilns).

*Heat transfer medium* means any material that is used to transfer heat from one point to another point.

*Maximum design heat input capacity* means the ability of a steam generating unit to combust a stated maximum amount of fuel (or combination of fuels) on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

*Natural gas* means: (1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17).

*Noncontinental area* means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

*Oil* means crude oil or petroleum, or a liquid fuel derived from crude oil or petroleum, including distillate oil and residual oil.

*Potential sulfur dioxide emission rate* means the theoretical $SO_2$ emissions (nanograms per joule (ng/J) or lb/MMBtu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

*Process heater* means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

*Residual oil* means crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Steam generating unit* means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in this subpart.

*Steam generating unit operating day* means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

*Wet flue gas desulfurization technology* means an $SO_2$ control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition includes devices where the liquid material is subsequently converted to another form. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium compounds.

*Wet scrubber system* means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of PM or $SO_2$.

*Wood* means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

**§ 60.42c Standard for sulfur dioxide ($SO_2$).**

(a) Except as provided in paragraphs (b), (c), and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that combusts only coal shall neither: cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction), nor cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is combusted with other fuels, the affected facility shall neither: cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction), nor cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of the emission limit is determined pursuant to paragraph (e)(2) of this section.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that:

(1) Combusts only coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 20 percent (0.20) of the potential $SO_2$ emission rate (80 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is fired with coal refuse, the affected facility subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 87 ng/J (0.20 lb/MMBtu) heat input $SO_2$ emissions limit or the 90 percent $SO_2$ reduction requirement specified in paragraph (a) of this section and the emission limit is determined pursuant to paragraph (e)(2) of this section.

(2) Combusts only coal and that uses an emerging technology for the control of $SO_2$ emissions shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 50 percent (0.50) of the potential $SO_2$ emission rate (50 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 260 ng/J (0.60 lb/MMBtu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 50 percent $SO_2$ reduction requirement specified in this paragraph and the emission limit determined pursuant to paragraph (e)(2) of this section.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, alone or in combination with any other fuel, and is listed in paragraphs (c)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the emission limit determined pursuant to paragraph (e)(2) of this section. Percent reduction requirements are not applicable to affected facilities under paragraphs (c)(1), (2), (3), or (4).

(1) Affected facilities that have a heat input capacity of 22 MW (75 MMBtu/hr) or less.

(2) Affected facilities that have an annual capacity for coal of 55 percent (0.55) or less and are subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less.

(3) Affected facilities located in a noncontinental area.

(4) Affected facilities that combust coal in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from exhaust gases entering the duct burner.

(d) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 215 ng/J (0.50 lb/MMBtu) heat input; or, as an alternative, no owner or operator of an affected facility that combusts oil shall combust oil in the affected facility that contains greater than 0.5 weight percent sulfur. The percent reduction requirements are not applicable to affected facilities under this paragraph.

(e) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the following:

(1) The percent of potential $SO_2$ emission rate or numerical $SO_2$ emission rate required under paragraph (a) or (b)(2) of this section, as applicable, for any affected facility that

(i) Combusts coal in combination with any other fuel;

(ii) Has a heat input capacity greater than 22 MW (75 MMBtu/hr); and

(iii) Has an annual capacity factor for coal greater than 55 percent (0.55); and

(2) The emission limit determined according to the following formula for any affected facility that combusts coal, oil, or coal and oil with any other fuel:

$$E_s = \frac{(K_a H_a + K_b H_b + K_c H_c)}{(H_a + H_b + H_c)}$$

Where:

$E_s$ = $SO_2$ emission limit, expressed in ng/J or lb/MMBtu heat input;

$K_a$ = 520 ng/J (1.2 lb/MMBtu);

$K_b$ = 260 ng/J (0.60 lb/MMBtu);

$K_c$ = 215 ng/J (0.50 lb/MMBtu);

$H_a$ = Heat input from the combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in Joules (J) [MMBtu];

$H_b$ = Heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (MMBtu); and

$H_c$ $K_a H_b$ = Heat input from the combustion of oil, in J (MMBtu).

(f) Reduction in the potential $SO_2$ emission rate through fuel pretreatment is not credited toward the percent reduction requirement under paragraph (b)(2) of this section unless:

(1) Fuel pretreatment results in a 50 percent (0.50) or greater reduction in the potential $SO_2$ emission rate; and

(2) Emissions from the pretreated fuel (without either combustion or post-combustion $SO_2$ control) are equal to or less than the emission limits specified under paragraph (b)(2) of this section.

(g) Except as provided in paragraph (h) of this section, compliance with the percent reduction requirements, fuel oil sulfur limits, and emission limits of this section shall be determined on a 30-day rolling average basis.

(h) For affected facilities listed under paragraphs (h)(1), (2), or (3) of this section, compliance with the emission limits or fuel oil sulfur limits under this section may be determined based on a certification from the fuel supplier, as described under § 60.48c(f), as applicable.

(1) Distillate oil-fired affected facilities with heat input capacities between 2.9 and 29 MW (10 and 100 MMBtu/hr).

(2) Residual oil-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 MMBtu/hr).

(3) Coal-fired facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 MMBtu/hr).

(i) The $SO_2$ emission limits, fuel oil sulfur limits, and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(j) Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or for heat derived from exhaust gases from other sources, such as stationary gas turbines, internal combustion engines, and kilns.

**§ 60.43c Standard for particulate matter (PM).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal or combusts mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 22 ng/J (0.051 lb/MMBtu) heat input if the affected facility combusts only coal, or combusts coal with other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility combusts coal with other fuels, has an annual capacity factor for the other fuels greater than 10 percent (0.10), and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts wood or combusts mixtures of wood with other fuels (except coal) and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emissions limits:

(1) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility has an annual capacity factor for wood greater than 30 percent (0.30); or

(2) 130 ng/J (0.30 lb/MMBtu) heat input if the affected facility has an annual capacity factor for wood of 30 percent (0.30) or less and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for wood of 30 percent (0.30) or less.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, wood, or oil and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(d) The PM and opacity standards under this section apply at all times, except during periods of startup, shutdown, or malfunction.

(e)(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 13 ng/J (0.030 lb/MMBtu) heat input, except as provided in paragraphs (e)(2), (e)(3), and (e)(4) of this section.

(2) As an alternative to meeting the requirements of paragraph (e)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of both:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels; and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(4) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, an owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.50 weight percent sulfur or a mixture of 0.50 weight percent sulfur oil with other fuels not subject to a PM standard under § 60.43c and not using a post-combustion technology (except a wet scrubber) to reduce PM or $SO_2$ emissions is not subject to the PM limit in this section.

**§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.**

(a) Except as provided in paragraphs (g) and (h) of this section and § 60.8(b), performance tests required under § 60.8 shall be conducted following the procedures specified in paragraphs (b), (c), (d), (e), and (f) of this section, as applicable. Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(b) The initial performance test required under § 60.8 shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the percent reduction requirements and $SO_2$ emission limits under § 60.42c shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affect facility will be operated, but not later than 180 days after the initial startup of the facility. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capacity, but must be representative of future operating conditions.

(c) After the initial performance test required under paragraph (b) of this section and § 60.8, compliance with the percent reduction requirements and $SO_2$ emission limits under § 60.42c is based on the average percent reduction and the average $SO_2$ emission rates for 30 consecutive steam generating unit operating days. A separate performance test is completed at the end of each steam generating unit operating day, and a new 30-day average percent reduction and $SO_2$ emission rate are calculated to show compliance with the standard.

(d) If only coal, only oil, or a mixture of coal and oil is combusted in an

affected facility, the procedures in Method 19 of appendix A of this part are used to determine the hourly $SO_2$ emission rate ($E_{ho}$) and the 30-day average $SO_2$ emission rate ($E_{ao}$). The hourly averages used to compute the 30-day averages are obtained from the CEMS. Method 19 of appendix A of this part shall be used to calculate $E_{ao}$ when using daily fuel sampling or Method 6B of appendix A of this part.

(e) If coal, oil, or coal and oil are combusted with other fuels:

(1) An adjusted $E_{ho}$ ($E_{ho}o$) is used in Equation 19–19 of Method 19 of appendix A of this part to compute the adjusted $E_{ao}$ ($E_{ao}o$). The $E_{ho}o$ is computed using the following formula:

$$E_{ho}o = \frac{E_{ho} - E_w\left(1 - X_k\right)}{X_k}$$

Where:

$E_{ho}o$ = Adjusted $E_{ho}$, ng/J (lb/MMBtu);

$E_{ho}$ = Hourly $SO_2$ emission rate, ng/J (lb/MMBtu);

$E_w$ = $SO_2$ concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 9 of appendix A of this part, ng/J (lb/MMBtu). The value $E_w$ for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure $E_w$ if the owner or operator elects to assume $E_w = 0$.

$X_k$ = Fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19 of appendix A of this part.

(2) The owner or operator of an affected facility that qualifies under the provisions of § 60.42c(c) or (d) (where percent reduction is not required) does not have to measure the parameters $E_w$ or $X_k$ if the owner or operator of the affected facility elects to measure emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19 of appendix A of this part.

(f) Affected facilities subject to the percent reduction requirements under § 60.42c(a) or (b) shall determine compliance with the $SO_2$ emission limits under § 60.42c pursuant to paragraphs (d) or (e) of this section, and shall determine compliance with the percent reduction requirements using the following procedures:

(1) If only coal is combusted, the percent of potential $SO_2$ emission rate is computed using the following formula:

$$\%P_s = 100\left(1 - \frac{\%R_g}{100}\right)\left(1 - \frac{\%R_f}{100}\right)$$

Where:

$\%P_s$ = Potential $SO_2$ emission rate, in percent;

$\%R_g$ = $SO_2$ removal efficiency of the control device as determined by Method 19 of appendix A of this part, in percent; and

$\%R_f$ = $SO_2$ removal efficiency of fuel pretreatment as determined by Method 19 of appendix A of this part, in percent.

(2) If coal, oil, or coal and oil are combusted with other fuels, the same procedures required in paragraph (f)(1) of this section are used, except as provided for in the following:

(i) To compute the $\%P_s$, an adjusted $\%R_g$ ($\%R_g o$) is computed from $E_{ao}o$ from paragraph (e)(1) of this section and an adjusted average $SO_2$ inlet rate ($E_{ai}o$) using the following formula:

$$\%R_g o = 100\left(1 - \frac{E_{ao}^{o}}{E_{ai}^{o}}\right)$$

Where:

$\%R_g o$ = Adjusted $\%R_g$, in percent;

$E_{ao}o$ = Adjusted $E_{ao}$, ng/J (lb/MMBtu); and

$E_{ai}o$ = Adjusted average $SO_2$ inlet rate, ng/J (lb/MMBtu).

(ii) To compute $E_{ai}o$, an adjusted hourly $SO_2$ inlet rate ($E_{hi}o$) is used. The $E_{hi}o$ is computed using the following formula:

$$E_{hi}o = \frac{E_{hi} - E_w\left(1 - X_k\right)}{X_k}$$

Where:

$E_{hi}o$ = Adjusted $E_{hi}$, ng/J (lb/MMBtu);

$E_{hi}$ = Hourly $SO_2$ inlet rate, ng/J (lb/MMBtu);

$E_w$ = $SO_2$ concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 19 of appendix A of this part, ng/J (lb/MMBtu). The value $E_w$ for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure $E_w$ if the owner or operator elects to assume $E_w = 0$; and

$X_k$ = Fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19 of appendix A of this part.

(g) For oil-fired affected facilities where the owner or operator seeks to demonstrate compliance with the fuel oil sulfur limits under § 60.42c based on shipment fuel sampling, the initial performance test shall consist of sampling and analyzing the oil in the initial tank of oil to be fired in the steam generating unit to demonstrate that the oil contains 0.5 weight percent sulfur or less. Thereafter, the owner or operator of the affected facility shall sample the oil in the fuel tank after each new shipment of oil is received, as described under § 60.46c(d)(2).

(h) For affected facilities subject to § 60.42c(h)(1), (2), or (3) where the owner or operator seeks to demonstrate compliance with the $SO_2$ standards based on fuel supplier certification, the performance test shall consist of the certification, the certification from the fuel supplier, as described under § 60.48c(f), as applicable.

(i) The owner or operator of an affected facility seeking to demonstrate compliance with the $SO_2$ standards under § 60.42c(c)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

(j) The owner or operator of an affected facility shall use all valid $SO_2$ emissions data in calculating $\%P_s$ and $E_{ho}$ under paragraphs (d), (e), or (f) of this section, as applicable, whether or not the minimum emissions data requirements under § 60.46c(f) are achieved. All valid emissions data, including valid data collected during periods of startup, shutdown, and malfunction, shall be used in calculating $\%P_s$ or $E_{ho}$ pursuant to paragraphs (d), (e), or (f) of this section, as applicable.

**§ 60.45c Compliance and performance test methods and procedures for particulate matter.**

(a) The owner or operator of an affected facility subject to the PM and/or opacity standards under § 60.43c shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, to determine compliance with the standards using the following procedures and reference methods, except as specified in paragraph (c) of this section.

(1) Method 1 of appendix A of this part shall be used to select the sampling site and the number of traverse sampling points.

(2) Method 3 of appendix A of this part shall be used for gas analysis when applying Method 5, 5B, or 17 of appendix A of this part.

(3) Method 5, 5B, or 17 of appendix A of this part shall be used to measure the concentration of PM as follows:

(i) Method 5 of appendix A of this part may be used only at affected facilities without wet scrubber systems.

(ii) Method 17 of appendix A of this part may be used at affected facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of Sections 8.1 and 11.1 of Method 5B of appendix A of this part may be used in Method 17 of appendix A of this part only if Method 17 of appendix A of this part is used in conjunction with a wet scrubber system. Method 17 of appendix A of this part shall not be used in conjunction with a wet scrubber system if the effluent is saturated or laden with water droplets.

(iii) Method 5B of appendix A of this part may be used in conjunction with a wet scrubber system.

(4) The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dry standard cubic meters (dscm) [60 dry standard cubic feet (dscf)] except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(5) For Method 5 or 5B of appendix A of this part, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160 ±14 °C (320±25 °F).

(6) For determination of PM emissions, an oxygen ($O_2$) or carbon dioxide ($CO_2$) measurement shall be obtained simultaneously with each run of Method 5, 5B, or 17 of appendix A of this part by traversing the duct at the same sampling location.

(7) For each run using Method 5, 5B, or 17 of appendix A of this part, the emission rates expressed in ng/J (lb/MMBtu) heat input shall be determined using:

(i) The $O_2$ or $CO_2$ measurements and PM measurements obtained under this section, (ii) The dry basis F factor, and

(iii) The dry basis emission rate calculation procedure contained in Method 19 of appendix A of this part.

(8) Method 9 of appendix A of this part (6-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

(b) The owner or operator of an affected facility seeking to demonstrate compliance with the PM standards under § 60.43c(b)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

(c) In place of PM testing with EPA Reference Method 5, 5B, or 17 of appendix A of this part, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring PM emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor PM emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 of appendix A of this part shall install, calibrate, maintain, and operate a CEMS and shall comply with the requirements specified in paragraphs (c)(1) through (c)(13) of this section.

(1) Notify the Administrator 1 month before starting use of the system.

(2) Notify the Administrator 1 month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of CEMS if the owner or operator was previously determining compliance by Method 5, 5B, or 17 of appendix A of this part performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for PM emissions as required under § 60.8 of subpart A of this part. Compliance with the PM emission limit shall be determined by using the CEMS specified in paragraph (d) of this section to measure PM and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19 of appendix A of this part, section 4.1.

(6) Compliance with the PM emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using CEMS outlet data.

(7) At a minimum, valid CEMS hourly averages shall be obtained as specified in paragraph (d)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(8) The 1-hour arithmetic averages required under paragraph (d)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (d)(7) of this section are not met.

(10) The CEMS shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the CEMS required by Performance Specification 11 in appendix B of this part, PM and $O_2$ (or $CO_2$) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraph (d)(7)(i) of this section.

(i) For PM, EPA Reference Method 5, 5B, or 17 of appendix A of this part shall be used.

(ii) For $O_2$ (or $CO_2$), EPA reference Method 3, 3A, or 3B of appendix A of this part, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 of appendix A of this part to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours on a 30-day rolling average.

(d) The owner or operator of an affected facility seeking to demonstrate compliance under § 60.43c(e)(4) shall follow the applicable procedures under § 60.48c(f). For residual oil-fired affected facilities, fuel supplier certifications are only allowed for facilities with heat input capacities

between 2.9 and 8.7 MW (10 to 30 MMBtu/hr).

**§ 60.46c Emission monitoring for sulfur dioxide.**

(a) Except as provided in paragraphs (d) and (e) of this section, the owner or operator of an affected facility subject to the $SO_2$ emission limits under § 60.42c shall install, calibrate, maintain, and operate a CEMS for measuring $SO_2$ concentrations and either $O_2$ or $CO_2$ concentrations at the outlet of the $SO_2$ control device (or the outlet of the steam generating unit if no $SO_2$ control device is used), and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements under § 60.42c shall measure $SO_2$ concentrations and either $O_2$ or $CO_2$ concentrations at both the inlet and outlet of the $SO_2$ control device.

(b) The 1-hour average $SO_2$ emission rates measured by a CEMS shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the average emission rates under § 60.42c. Each 1-hour average $SO_2$ emission rate must be based on at least 30 minutes of operation, and shall be calculated using the data points required under § 60.13(h)(2). Hourly $SO_2$ emission rates are not calculated if the affected facility is operated less than 30 minutes in a 1-hour period and are not counted toward determination of a steam generating unit operating day.

(c) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 of appendix B of this part.

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 of appendix F of this part.

(3) For affected facilities subject to the percent reduction requirements under § 60.42c, the span value of the $SO_2$ CEMS at the inlet to the $SO_2$ control device shall be 125 percent of the maximum estimated hourly potential $SO_2$ emission rate of the fuel combusted, and the span value of the $SO_2$ CEMS at the outlet from the $SO_2$ control device shall be 50 percent of the maximum estimated hourly potential $SO_2$ emission rate of the fuel combusted.

(4) For affected facilities that are not subject to the percent reduction requirements of § 60.42c, the span value of the $SO_2$ CEMS at the outlet from the $SO_2$ control device (or outlet of the steam generating unit if no $SO_2$ control device is used) shall be 125 percent of the maximum estimated hourly potential $SO_2$ emission rate of the fuel combusted.

(d) As an alternative to operating a CEMS at the inlet to the $SO_2$ control device (or outlet of the steam generating unit if no $SO_2$ control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average $SO_2$ emission rate by sampling the fuel prior to combustion. As an alternative to operating a CEMS at the outlet from the $SO_2$ control device (or outlet of the steam generating unit if no $SO_2$ control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average $SO_2$ emission rate by using Method 6B of appendix A of this part. Fuel sampling shall be conducted pursuant to either paragraph (d)(1) or (d)(2) of this section. Method 6B of appendix A of this part shall be conducted pursuant to paragraph (d)(3) of this section.

(1) For affected facilities combusting coal or oil, coal or oil samples shall be collected daily in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according the Method 19 of appendix A of this part. Method 19 of appendix A of this part provides procedures for converting these measurements into the format to be used in calculating the average $SO_2$ input rate.

(2) As an alternative fuel sampling procedure for affected facilities combusting oil, oil samples may be collected from the fuel tank for each steam generating unit immediately after the fuel tank is filled and before any oil is combusted. The owner or operator of the affected facility shall analyze the oil sample to determine the sulfur content of the oil. If a partially empty fuel tank is refilled, a new sample and analysis of the fuel in the tank would be required upon filling. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when calculating the 30-day rolling average until the next shipment is received. If the fuel analysis shows that the sulfur content in the fuel tank is greater than 0.5 weight percent sulfur, the owner or operator shall ensure that the sulfur content of subsequent oil shipments is low enough to cause the 30-day rolling average sulfur content to be 0.5 weight percent sulfur or less.

(3) Method 6B of appendix A of this part may be used in lieu of CEMS to measure $SO_2$ at the inlet or outlet of the $SO_2$ control system. An initial stratification test is required to verify the adequacy of the Method 6B of appendix A of this part sampling location. The stratification test shall consist of three paired runs of a suitable $SO_2$ and $CO_2$ measurement train operated at the candidate location and a second similar train operated according to the procedures in § 3.2 and the applicable procedures in section 7 of Performance Specification 2 of appendix B of this part. Method 6B of appendix A of this part, Method 6A of appendix A of this part, or a combination of Methods 6 and 3 of appendix A of this part or Methods 6C and 3A of appendix A of this part are suitable measurement techniques. If Method 6B of appendix A of this part is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B of appendix A of this part 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

(e) The monitoring requirements of paragraphs (a) and (d) of this section shall not apply to affected facilities subject to § 60.42c(h) (1), (2), or (3) where the owner or operator of the affected facility seeks to demonstrate compliance with the $SO_2$ standards based on fuel supplier certification, as described under § 60.48c(f), as applicable.

(f) The owner or operator of an affected facility operating a CEMS pursuant to paragraph (a) of this section, or conducting as-fired fuel sampling pursuant to paragraph (d)(1) of this section, shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator.

**§ 60.47c Emission monitoring for particulate matter.**

(a) Except as provided in paragraphs (c), (d), (e), and (f) of this section, the owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a COMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system.

(b) All COMS for measuring opacity shall be operated in accordance with the

applicable procedures under Performance Specification 1 of appendix B of this part. The span value of the opacity COMS shall be between 60 and 80 percent.

(c) Affected facilities that burn only distillate oil that contains no more than 0.5 weight percent sulfur and/or liquid or gaseous fuels with potential sulfur dioxide emission rates of 26 ng/J (0.06 lb/MMBtu) heat input or less and that do not use a post-combustion technology to reduce $SO_2$ or PM emissions are not required to operate a CEMS for measuring opacity if they follow the applicable procedures under § 60.48c(f).

(d) Owners or operators complying with the PM emission limit by using a PM CEMS monitor instead of monitoring opacity must calibrate, maintain, and operate a CEMS, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.45c(d). The CEMS specified in paragraph § 60.45c(d) shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

(e) An affected facility that does not use post-combustion technology (except a wet scrubber) for reducing PM, $SO_2$, or carbon monoxide (CO) emissions, burns only gaseous fuels or fuel oils that contain less than or equal to 0.5 weight percent sulfur, and is operated such that emissions of CO to the atmosphere from the affected facility are maintained at levels less than or equal to 0.15 lb/MMBtu on a boiler operating day average basis is not required to operate a COMS for measuring opacity. Owners and operators of affected facilities electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (e)(1) through (4) of this section.

(1) You must monitor CO emissions using a CEMS according to the procedures specified in paragraphs (e)(1)(i) through (iv) of this section.

(i) The CO CEMS must be installed, certified, maintained, and operated according to the provisions in § 60.58b(i)(3) of subpart Eb of this part.

(ii) Each 1-hour CO emissions average is calculated using the data points generated by the CO CEMS expressed in parts per million by volume corrected to 3 percent oxygen (dry basis).

(iii) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. At least two data points per hour must be used to calculate each 1-hour average.

(iv) Quarterly accuracy determinations and daily calibration drift tests for the CO CEMS must be performed in accordance with procedure 1 in appendix F of this part.

(2) You must calculate the 1-hour average CO emissions levels for each steam generating unit operating day by multiplying the average hourly CO output concentration measured by the CO CEMS times the corresponding average hourly flue gas flow rate and divided by the corresponding average hourly heat input to the affected source. The 24-hour average CO emission level is determined by calculating the arithmetic average of the hourly CO emission levels computed for each steam generating unit operating day.

(3) You must evaluate the preceding 24-hour average CO emission level each steam generating unit operating day excluding periods of affected source startup, shutdown, or malfunction. If the 24-hour average CO emission level is greater than 0.15 lb/MMBtu, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high emission incident and, take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the 24-hour average CO emission level to 0.15 lb/MMBtu or less.

(4) You must record the CO measurements and calculations performed according to paragraph (e) of this section and any corrective actions taken. The record of corrective action taken must include the date and time during which the 24-hour average CO emission level was greater than 0.15 lb/MMBtu, and the date, time, and description of the corrective action.

(f) An affected facility that burns only gaseous fuels or fuel oils that contain less than or equal to 0.5 weight percent sulfur and operates according to a written site-specific monitoring plan approved by the appropriate delegated permitting authority is not required to operate a COMS for measuring opacity. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for the affected facility indicative of compliance with the opacity standard.

**§ 60.48c Reporting and recordkeeping requirements.**

(a) The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction and actual startup, as provided by § 60.7 of this part. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of fuels to be combusted in the affected facility.

(2) If applicable, a copy of any federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42c, or § 60.43c.

(3) The annual capacity factor at which the owner or operator anticipates operating the affected facility based on all fuels fired and based on each individual fuel fired.

(4) Notification if an emerging technology will be used for controlling $SO_2$ emissions. The Administrator will examine the description of the control device and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42c(a) or (b)(1), unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the $SO_2$ emission limits of § 60.42c, or the PM or opacity limits of § 60.43c, shall submit to the Administrator the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS and/or COMS using the applicable performance specifications in appendix B of this part.

(c) The owner or operator of each coal-fired, oil-fired, or wood-fired affected facility subject to the opacity limits under § 60.43c(c) shall submit excess emission reports for any excess emissions from the affected facility that occur during the reporting period.

(d) The owner or operator of each affected facility subject to the $SO_2$ emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall submit reports to the Administrator.

(e) The owner or operator of each affected facility subject to the $SO_2$ emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall keep records and submit reports as required under paragraph (d) of this section, including the following information, as applicable.

(1) Calendar dates covered in the reporting period.

(2) Each 30-day average $SO_2$ emission rate (ng/J or lb/MMBtu), or 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period; reasons for any noncompliance with the

emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent of potential $SO_2$ emission rate calculated during the reporting period, ending with the last 30-day period; reasons for any noncompliance with the emission standards; and a description of the corrective actions taken.

(4) Identification of any steam generating unit operating days for which $SO_2$ or diluent ($O_2$ or $CO_2$) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken.

(5) Identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and a description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit.

(6) Identification of the F factor used in calculations, method of determination, and type of fuel combusted.

(7) Identification of whether averages have been obtained based on CEMS rather than manual sampling methods.

(8) If a CEMS is used, identification of any times when the pollutant concentration exceeded the full span of the CEMS.

(9) If a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 of appendix B of this part.

(10) If a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), (3), or (4) of this section, as applicable. In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

(f) Fuel supplier certification shall include the following information:

(1) For distillate oil:

(i) The name of the oil supplier;

(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c; and

(iii) The sulfur content of the oil.

(2) For residual oil:

(i) The name of the oil supplier;

(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and

(iv) The method used to determine the sulfur content of the oil.

(3) For coal:

(i) The name of the coal supplier;

(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);

(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and

(iv) The methods used to determine the properties of the coal.

(4) For other fuels:

(i) The name of the supplier of the fuel;

(ii) The potential sulfur emissions rate of the fuel in ng/J heat input; and

(iii) The method used to determine the potential sulfur emissions rate of the fuel.

(g)(1) Except as provided under paragraphs (g)(2) and (g)(3) of this section, the owner or operator of each affected facility shall record and maintain records of the amount of each fuel combusted during each operating day.

(2) As an alternative to meeting the requirements of paragraph (g)(1) of this section, the owner or operator of an affected facility that combusts only natural gas, wood, fuels using fuel certification in § 60.48c(f) to demonstrate compliance with the $SO_2$ standard, fuels not subject to an emissions standard (excluding opacity), or a mixture of these fuels may elect to record and maintain records of the amount of each fuel combusted during each calendar month.

(3) As an alternative to meeting the requirements of paragraph (g)(1) of this section, the owner or operator of an affected facility or multiple affected facilities located on a contiguous property unit where the only fuels combusted in any steam generating unit (including steam generating units not subject to this subpart) at that property are natural gas, wood, distillate oil meeting the most current requirements in § 60.42C to use fuel certification to demonstrate compliance with the $SO_2$ standard, and/or fuels, excluding coal and residual oil, not subject to an emissions standard (excluding opacity) may elect to record and maintain records of the total amount of each steam generating unit fuel delivered to that property during each calendar month.

(h) The owner or operator of each affected facility subject to a federally enforceable requirement limiting the annual capacity factor for any fuel or mixture of fuels under § 60.42c or § 60.43c shall calculate the annual capacity factor individually for each fuel combusted. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of the calendar month.

(i) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of two years following the date of such record.

(j) The reporting period for the reports required under this subpart is each six-month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

**Appendix B—[Amended]**

■ 7. Appendix B to part 60 is amended by revising section 8.3.1 in Performance Specification 2, to read as follows:

**Appendix B to Part 60—Performance Specifications**

* * * * *

*Performance Specification 2—Specifications and Test Procedures for $SO_2$ and $NO_X$ Continuous Emission Monitoring Systems in Stationary Sources*

* * * * *

8.3.1 *CD Test Period.* While the affected facility is operating, determine the magnitude of the CD once each day (at 24-hour intervals) for 7 consecutive calendar days according to the procedure given in Sections 8.3.2 through 8.3.4. Alternatively, the CD test may be conducted over 7 consecutive unit operating days.

* * * * *

**Appendix F—[Amended]**

■ 8. Procedure 1 in Appendix F to part 60 is amended by:

■ a. Revising the first sentence of section 5.1.1; and

■ b. Revising section 5.1.4.

The revisions read as follows:

**Appendix F to Part 60—Quality Assurance Procedures**

* * * * *

5.1.1 Relative Accuracy Test Audit (RATA). The RATA must be conducted at least once every four calendar quarters, except as otherwise noted in section 5.1.4 of this appendix.

* * * * *

5.1.4 Other Alternative Audits. Other alternative audit procedures may be used as approved by the Administrator for three of four calendar quarters. One RATA is required at least every four calendar quarters, except in the case where the affected facility is off-line (does not operate) in the fourth calendar quarter since the quarter of the previous RATA. In that case, the RATA shall be performed in the quarter in which the unit recommences operation. Also, cylinder gas audits are not be required for calendar quarters in which the affected facility does not operate.

* * * * *

[FR Doc. E7–7673 Filed 6–12–07; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
June 13, 2007

# Part III

# The President

## Proclamation 8156—Father's Day, 2007

Federal Register
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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8156 of June 11, 2007**

## Father's Day, 2007

**By the President of the United States of America**

**A Proclamation**

On Father's Day, we reflect on the many ways that fathers contribute to the lives of their children with spoken words and unspoken kindness.

Fathers are one of the most important influences in the lives of children, and their unconditional love is an indispensable anchor of certainty and strength. By placing their family's well-being above their own, fathers provide children with an example of what it means to be a responsible person. Through unwavering devotion and daily sacrifice, fathers work to create an environment where children are protected and encouraged. Fathers instill in their children an understanding of right and wrong and help them to grow in confidence and character. These dedicated men strive to give their sons and daughters the necessary foundation to make good choices and lead lives of purpose.

On Father's Day and throughout the year, we honor the men who have taken on the great joy and responsibility of fatherhood, and we celebrate their extraordinary impact and influence. All Americans are especially grateful to the many fathers who are serving their country as members of the Armed Forces, and we lift them and their loved ones up in prayer.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 17, 2007, as Father's Day. I encourage all Americans to express admiration and appreciation to fathers for their many contributions to our Nation's children. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day. I also call upon State and local governments and citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–2948
Filed 6–12–07; 8:47 am]
Billing code 3195–01–P

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Pipeline safety:

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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.

**H.R. 414/P.L. 110–29**

To designate the facility of the United States Postal Service located at 60 Calle McKinley, West in Mayaguez, Puerto Rico, as the "Miguel Angel García Méndez Post Office Building". (June 1, 2007; 121 Stat. 219)

**H.R. 437/P.L. 110–30**

To designate the facility of the United States Postal Service located at 500 West Eisenhower Street in Rio Grande City, Texas, as the "Lino Perez, Jr. Post Office". (June 1, 2007; 121 Stat. 220)

**H.R. 625/P.L. 110–31**

To designate the facility of the United States Postal Service located at 4230 Maine Avenue in Baldwin Park, California, as the "Atanacio Haro-Marin Post Office". (June 1, 2007; 121 Stat. 221)

**H.R. 1402/P.L. 110–32**

To designate the facility of the United States Postal Service located at 320 South Lecanto Highway in Lecanto, Florida, as the "Sergeant Dennis J. Flanagan Lecanto Post Office Building". (June 1, 2007; 121 Stat. 222)

**H.R. 2080/P.L. 110–33**

To amend the District of Columbia Home Rule Act to conform the District charter to revisions made by the Council of the District of Columbia relating to public education. (June 1, 2007; 121 Stat. 223)

**Last List May 31, 2007**

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